

*WILLIAM ALLEN MEANS v.*

*E.M. PETERSON, et al.*

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*DAVID HARVEY*

*04/26/2021*

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WILLIAM ALLEN MEANS v.  
E.M. PETERSON, et al.

DAVID HARVEY  
04/26/2021

1 IN THE UNITED STATES DISTRICT COURT FOR THE  
2 SOUTHERN DISTRICT OF WEST VIRGINIA  
3 AT CHARLESTON  
4 \*  
5 WILLIAM ALLEN MEANS,  
6 Plaintiff,  
7 vs. CIVIL ACTION  
NO. 2:20-cv-00561  
8 E.M. PETERSON, D. HARVEY,  
and THE CITY OF SOUTH  
9 CHARLESTON,  
10 Defendants.  
11 \*  
12  
13

14 Deposition of David Harvey taken by the  
15 Plaintiff under the West Virginia Rules of Civil  
Procedure in the above-entitled action, pursuant to  
16 notice, before Angela L. Curtis, a Certified Court  
Reporter, at Pullin, Fowler, Flanagan, Brown & Poe, 901  
17 Quarrier Street, Charleston, West Virginia, on the 26th  
18 day of April 2021.  
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<p>1 the entire line of questioning here and note -- please      2 note it on the record. I don't think this is really a      3 discoverable part of the case.      4 This is -- I'm not sure what you're      5 looking for here, but this is not -- these are not      6 facts that are going to be presented to a jury. I'm      7 not sure what you're looking for in questioning him on      8 this, on his decision to take the Fifth, not take the      9 Fifth. I'll let it go for a little bit, but it's      10 just not --</p> <p>11 MR. FORBES: Well, if you want to      12 instruct him not to answer you can. I'm concerned      13 about whether or not he understands the rights that      14 he's giving up and want to make sure it's clear on the      15 record that he does because he clearly filed a document      16 a few weeks ago saying he was going to take the Fifth      17 Amendment.</p> <p>18 Q. So why -- why did you say that?</p> <p>19 A. That would be something you'd have to ask my      20 attorney John Dascoli.</p> <p>21 Q. Is Mr. Dascoli not coming today?</p> <p>22 A. No.</p> <p>23 Q. Does Mr. Dascoli represent you criminally?</p> <p>24 A. Yes.</p>	Page 9	Page 11
<p>1 Q. When did you hire him?</p> <p>2 A. Couple months ago. I don't know exactly when.</p> <p>3 Q. Okay. Let me ask you, before we continue with      4 that, how old are you?</p> <p>5 A. Twenty-nine.</p> <p>6 Q. How far did you go in school?</p> <p>7 A. Associate's degree.</p> <p>8 Q. From where?</p> <p>9 A. First it was Kanawha Valley Technical College,      10 now it's Bridge Valley and also another associate's      11 from Mountwest.</p> <p>12 Q. What are your associate's degrees in?</p> <p>13 A. Criminal justice.</p> <p>14 Q. Both of them?</p> <p>15 A. I believe so. The second one was associated      16 with the Police Academy, but it was criminal justice as      17 well.</p> <p>18 Q. Have you ever been deposed before?</p> <p>19 A. No.</p> <p>20 Q. Okay. Let me give you just some basic rules      21 then we're going to kind of go back into what we're      22 talking about. The court reporter is going to take      23 down everything that's said here today. If you don't      24 understand something that I ask you, ask me to rephrase</p>	Page 10	Page 12
		<p>1 Q. Okay, so a few months ago?</p> <p>2 A. Yeah.</p> <p>3 Q. Can you give me a ballpark of what month it      4 might have been?</p> <p>5 A. February.</p> <p>6 Q. Okay. So you knew there was an FBI      7 investigation into this case at least as early as      8 February of 2021?</p> <p>9 A. Best I can remember.</p> <p>10 Q. And I don't want to know about any specific      11 discussions with either your civil attorney here today      12 or your criminal lawyer, Mr. Dascoli, but let me ask      13 you this: Did you pay Mr. Dascoli?</p> <p>14 A. I did not.</p> <p>15 Q. Okay. How is it that he became your lawyer?</p> <p>16 How did you retain him?</p> <p>17 A. How did I retain him?</p> <p>18 Q. Yeah, how he is being paid?</p> <p>19 A. By the Fraternal Order of Police Legal Defense      20 Fund.</p> <p>21 Q. Okay. Is that like a fund that you're a      22 member of and it provides you a defense lawyer in      23 criminal cases?</p> <p>24 A. Yes.</p>

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<p style="text-align: right;">Page 13</p> <p>1 Q. How did you learn in February there was an FBI 2 investigation into this case? 3 A. In February, again, this would be attorney 4 client privilege. 5 Q. Okay. I don't want -- I don't want to know 6 what your lawyer told you. 7 MR. RUGGIER: If you learned of it -- if 8 you learned of something through your attorney, so your 9 attorney tells you, either your civil attorney or 10 criminal attorney, tells you that there's an 11 investigation, then I think that's probably protected, 12 attorney client privilege protected, but if you learned 13 of an FBI investigation because, you know, an FBI comes 14 to you and talks to you, that's different. 15 A. Mr. Ruggier explained to me that, you know, 16 that the allegations would have criminal -- 17 MR. RUGGIER: Objection. Stop. Stop. 18 I'm sorry. 19 Q. I want to be clear, I'm not -- 20 A. Talking about when I first hired Mr. Dascoli. 21 MR. RUGGIER: Right, but so you can't 22 talk -- if I tell you something -- 23 THE DEPONENT: Okay 24 MR. RUGGIER: -- and then you're going</p>	<p>1 so just sometime in February, late February. 2 Q. So you think it would have been late 3 February -- 4 A. Uh-huh. 5 Q. -- that you personally were contacted by the 6 FBI agent Lafferty? 7 A. Yes. 8 Q. You say you could get me more information. 9 What do you mean by that? 10 A. Like whenever, around whenever the call was or 11 whenever I wrote down his information. 12 Q. Okay, so you received a phone call from him? 13 A. Uh-huh. 14 Q. Is that the first communication you had 15 directly from the FBI? 16 A. Yes. 17 Q. And you've got a record of that somewhere? 18 A. Yes. 19 Q. Okay. Is that record in like a note that you 20 made or a message to somebody or what? 21 A. A note. A note on my phone. 22 Q. A note on your phone. Do you have your phone 23 with you today? 24 A. No. It's in my car.</p>
<p style="text-align: right;">Page 14</p> <p>1 to, you know -- 2 THE DEPONENT: The reason I hired -- 3 MR. RUGGIER: Right. You can't talk 4 about any information or advice that I gave you. 5 THE DEPONENT: Okay. 6 MR. RUGGIER: Or any information or 7 advice that John Dascoli gave you. 8 THE DEPONENT: Okay. 9 MR. RUGGIER: So we would object. 10 MR. FORBES: I'm not asking for what he 11 talked about with you or Mr. Dascoli. 12 MR. RUGGIER: It somehow got to that 13 which I wasn't -- 14 A. Around February is whenever I hired 15 Mr. Dascoli just in case something happened. Then a 16 little bit after that, a few weeks, not much longer 17 after, that's when I learned of the FBI investigation 18 because I was contacted by Lafferty. 19 Q. Okay, so you were contacted by FBI agent 20 Lafferty? 21 A. Uh-huh. 22 Q. Do you know when that was? 23 A. I could get more like in depth stuff, but I 24 would say just a few weeks after I hired Mr. Dascoli,</p>	<p>1 Q. If we took a break, is that something you 2 could get? 3 A. Yes. 4 Q. Okay. All right. We'll keep going. When we 5 take a break here in a little bit, we'll take a break 6 probably about every hour, okay? When we take a break, 7 I'd ask you to go out and get that, show it to your 8 counsel obviously and if you can, produce it, okay? 9 A. Okay. 10 Q. Now, what did you and Agent Lafferty talk 11 about when he called you? 12 A. He just was inquiring on giving a statement. 13 Q. A statement in what? I mean, what did he say 14 to you as best you remember? 15 A. Just talked about giving a statement reference 16 to this case, just come in and talk to him. 17 Q. Did you go give a statement? 18 A. No. 19 Q. Why not? 20 A. I told him that I would talk with my counsel 21 and then after that it he contacted me one more time, 22 told him who my counsel was and he never contacted me 23 again until we were cleared. 24 Q. So you told -- Agent Lafferty called you up,</p>

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<p>1 fellow law enforcement person; right?</p> <p>2 A. Yes, he's a member of law enforcement.</p> <p>3 Q. Yeah and he asked you to come give a statement</p> <p>4 about the Billy Means case?</p> <p>5 A. Yes.</p> <p>6 Q. And you said I can't do that, I need to talk</p> <p>7 to my lawyer?</p> <p>8 A. At that time I was hiring an attorney so I</p> <p>9 didn't have one just yet.</p> <p>10 Q. So you told him, hey, I better get a lawyer?</p> <p>11 A. No.</p> <p>12 Q. No, okay, what did you say to him?</p> <p>13 A. I told him I would give him a call back.</p> <p>14 Q. Did you tell him anything about getting a</p> <p>15 lawyer on that call?</p> <p>16 A. I don't recall.</p> <p>17 Q. So you just told Agent Lafferty you'd call him</p> <p>18 back and then you thought I better get a criminal</p> <p>19 lawyer?</p> <p>20 A. I think I was already in the process of</p> <p>21 getting one.</p> <p>22 Q. Well, that's what I'm confused by because I</p> <p>23 thought you said a minute ago that early February you</p> <p>24 hired Dascoli and then late February you get the call</p>	Page 17	<p>1 MR. FORBES: If you want to tell him not</p> <p>2 to answer you go ahead. I'm going to ask questions.</p> <p>3 MR. RUGGIER: You can -- go ahead.</p> <p>4 Repeat the question.</p> <p>5 Q. So why didn't you give a statement to Agent</p> <p>6 Lafferty?</p> <p>7 A. I've been cleared. I talked to him twice and</p> <p>8 then I never said I wasn't giving a statement to him</p> <p>9 and then we were cleared, so there's no need to. Why</p> <p>10 would I go give a statement if I've been cleared?</p> <p>11 Q. Okay, let me ask you about that. How do you</p> <p>12 know you've been cleared?</p> <p>13 A. From -- I don't know his name right off. You</p> <p>14 could talk to Chief Rinehart, but they were contacted</p> <p>15 by the FBI and said that we were cleared through them</p> <p>16 and the Department of Justice.</p> <p>17 Q. Okay. So who told you that?</p> <p>18 A. The Chief, Brad Rinehart.</p> <p>19 Q. So Chief Rinehart told you you've been cleared</p> <p>20 by the Department of Justice and the FBI?</p> <p>21 A. Yes.</p> <p>22 Q. Did he tell you how he learned that?</p> <p>23 A. Again, he was contacted by a member from the</p> <p>24 FBI, whoever is over their office, I'm not sure of his</p>
<p>1 from the FBI?</p> <p>2 A. Early February is whenever I started the FOP</p> <p>3 process of getting one. I don't remember exact dates</p> <p>4 or anything like that for counsel.</p> <p>5 Q. Okay, so when Lafferty called you, you already</p> <p>6 at that point had planned on getting criminal counsel?</p> <p>7 A. Yes.</p> <p>8 Q. And you never went and gave a statement to the</p> <p>9 FBI?</p> <p>10 A. Correct.</p> <p>11 Q. Why not?</p> <p>12 A. I was --</p> <p>13 MR. RUGGIER: Objection. I mean --</p> <p>14 MR. FORBES: He's here giving a statement</p> <p>15 today. Why can't he tell me -- I don't understand why</p> <p>16 he didn't talk to the FBI. What's he got to hide?</p> <p>17 MR. RUGGIER: Well, I don't understand</p> <p>18 how any of this is discoverable at all. It's not.</p> <p>19 It's --</p> <p>20 MR. FORBES: Number one, you filed a</p> <p>21 motion saying he just learned about it -- he just</p> <p>22 learned about it on the week of March 29 and his</p> <p>23 testimony is he learned about it a month earlier.</p> <p>24 MR. RUGGIER: That's not discoverable.</p>	Page 18	<p>1 name.</p> <p>2 Q. Okay, so Chief Rinehart told you that a member</p> <p>3 of FBI contacted him and told him that the</p> <p>4 investigation criminally into you with respect to Billy</p> <p>5 Means had cleared you?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. When was that conversation?</p> <p>8 A. After this, so I don't know exactly when.</p> <p>9 Q. Did anyone tell you whether the Department of</p> <p>10 Justice and the US Attorney's Office had made a</p> <p>11 charging decision about whether to charge you or not?</p> <p>12 A. They said we were cleared and there's --</p> <p>13 Q. Did they explain --</p> <p>14 A. You'd have to ask him specifically, but I</p> <p>15 think they mentioned there was no chargeable offenses.</p> <p>16 Q. Okay. Did anyone from the FBI ever tell you</p> <p>17 that?</p> <p>18 A. No.</p> <p>19 Q. Did you receive anything in writing from the</p> <p>20 FBI or the Department of Justice?</p> <p>21 A. No.</p> <p>22 Q. The conversation with Rinehart was when?</p> <p>23 A. A few weeks ago.</p> <p>24 Q. Okay. Did anyone from South Charleston, Chief</p>

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<p style="text-align: right;">Page 21</p> <p>1 <b>Rinehart or anyone else, put anything in writing to you</b>  2 <b>about the FBI investigation?</b></p> <p>3 A. No.</p> <p>4 Q. <b>Any text messaging?</b></p> <p>5 A. No.</p> <p>6 Q. <b>The conversation with Rinehart, was that in</b>  7 <b>person or on the phone?</b></p> <p>8 A. In person I believe.</p> <p>9 Q. <b>Who was present?</b></p> <p>10 A. Me and him.</p> <p>11 Q. <b>Just the two of you?</b></p> <p>12 A. Uh-huh.</p> <p>13 Q. <b>What about Officer Peterson?</b></p> <p>14 A. No.</p> <p>15 Q. <b>Where did it take place, that conversation?</b></p> <p>16 A. I believe in his office.</p> <p>17 Q. <b>How did you know to go into his office?</b></p> <p>18 A. I think he called. I don't recall specifically.</p> <p>19 Q. <b>Called you on the phone?</b></p> <p>20 A. Yes.</p> <p>21 Q. <b>Do you and Chief Rinehart talk on the phone</b>  22 <b>often?</b></p> <p>23 A. Not necessarily.</p>	<p style="text-align: right;">Page 23</p> <p>1 me through -- you gave me kind of your educational  2 history. Walk me through your employment history.</p> <p>3 A. Employment history in general?</p> <p>4 Q. <b>Yeah, everywhere you've ever worked.</b></p> <p>5 A. I worked -- I don't remember like very 6 specific dates or anything, but I worked at the Yeager  7 Airport.</p> <p>8 Q. <b>What did you do at Yeager Airport?</b></p> <p>9 A. Valet. Valet driver.</p> <p>10 Q. <b>When was that? Was that your first job?</b></p> <p>11 A. I think so. Probably 2011.</p> <p>12 Q. <b>Okay. Walk me through from that, from the</b>  13 <b>first job, as best you recall, first job to where we</b>  14 <b>are now.</b></p> <p>15 A. After that City of South Charleston as a 16 lifeguard. After that, Capitol. At the Capitol as a 17 telecommunicator and then after that the Dunbar Police 18 Department and then South Charleston Police Department.</p> <p>19 Q. <b>You said you were at the Capitol as a</b>  20 <b>telecommunicator. What's that?</b></p> <p>21 A. It's kind of like a dispatcher. You watch 22 cameras and manage the radios, answer the phones and 23 dispatch whoever accordingly, whether it be the police 24 or, you know, like if there's an emergency, a fire.</p>
<p style="text-align: right;">Page 22</p> <p>1 Q. <b>What about text messages, do you ever text</b>  2 <b>each other?</b></p> <p>3 A. Yeah. Not very often.</p> <p>4 Q. <b>Have you ever texted each other about anything</b>  5 <b>involving this case?</b></p> <p>6 A. No.</p> <p>7 Q. <b>Okay, so FBI agent Lafferty called you and</b>  8 <b>asked you to give a statement somewhere in late</b>  9 <b>February?</b></p> <p>10 A. Best I can recall. Maybe mid February, late 11 February.</p> <p>12 Q. <b>Okay, mid to late February, and you never gave</b>  13 <b>a statement to him?</b></p> <p>14 A. Correct.</p> <p>15 Q. <b>And then later you were told by your chief</b>  16 <b>that you had been cleared?</b></p> <p>17 A. Yes.</p> <p>18 Q. <b>Were you ever suspended as a South Charleston</b>  19 <b>police officer during this investigation?</b></p> <p>20 A. No.</p> <p>21 Q. <b>Have you ever been suspended as a South</b>  22 <b>Charleston police officer?</b></p> <p>23 A. No.</p> <p>24 Q. <b>All right. Let's back up for a minute. Walk</b></p>	<p style="text-align: right;">Page 24</p> <p>1 <b>So is this like the security force for the</b>  2 <b>Capitol?</b></p> <p>3 A. Yeah, they're attached with the police 4 department there.</p> <p>5 Q. <b>Okay. Did you receive any police training for</b>  6 <b>that job?</b></p> <p>7 A. No.</p> <p>8 Q. <b>All right, so your first police job was at</b>  9 <b>Dunbar; is that right?</b></p> <p>10 A. Correct.</p> <p>11 Q. <b>When was that?</b></p> <p>12 A. December 2013.</p> <p>13 Q. <b>Why did you decide to become a police officer</b>  14 <b>in December of 2013?</b></p> <p>15 A. Just to help people out. Job is always 16 different. There's always new stuff going on.</p> <p>17 Q. <b>Okay. Tell me about that hiring process. Was</b>  18 <b>there an application time? Did you take the test?</b></p> <p>19 A. You take the physical test, take a written 20 test and then go through the background process and 21 then if all that passes then you get hired.</p> <p>22 Q. <b>Okay. Did Dunbar send you to the State Police</b>  23 <b>Academy?</b></p> <p>24 A. Yes.</p>

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<p>1 Q. When was that?</p> <p>2 A. April of 2014.</p> <p>3 Q. How long were you at the academy?</p> <p>4 A. Four months. Graduated August 15th, 2014.</p> <p>5 Q. Did you receive any training at the State Police Academy with respect to spinal injury victims?</p> <p>6 A. No.</p> <p>7 Q. None at all?</p> <p>8 A. No.</p> <p>9 Q. Did you receive any medical training with the State Police Academy?</p> <p>10 A. Yes.</p> <p>11 Q. What kind?</p> <p>12 A. Like for trauma victims like gunshot wounds, stuff like that, like putting tourniquets on.</p> <p>13 Q. Do you remember taking part in a first responder training program at the State Police Academy?</p> <p>14 A. Yes.</p> <p>15 Q. Do you remember if there was part of that had to do with spinal injuries?</p> <p>16 A. Not that I recall.</p> <p>17 Q. Okay. Do you recall anybody ever training you on what to look for, signs and symptoms of spinal injuries?</p>	Page 25	Page 27
<p>1 A. No.</p> <p>2 Q. Do you recall anyone ever training you on the care for spinal injuries?</p> <p>3 A. No.</p> <p>4 Q. Okay. So you're at the State Police Academy for four months. Were you trained in use of force while you were at the Police Academy?</p> <p>5 A. Yes.</p> <p>6 Q. What did you learn?</p> <p>7 A. Like, can you be more specific?</p> <p>8 Q. Sure. When did they tell you it was appropriate to use various force methods such as pepper spray, tasers, things along those lines?</p> <p>9 A. Pepper spray can be used whenever somebody is non compliant and if they're possibly reaching where a weapon could be, then that's something that would be appropriate.</p> <p>10 Q. Any other reasons that someone could use pepper spray?</p> <p>11 A. Active aggression, like active fight.</p> <p>12 Q. Are there standards that you have to use to apply before you decide to use OCs or pepper spray?</p> <p>13 A. Standards?</p> <p>14 Q. Yeah. I mean, is there an assessment you've</p>	Page 26	Page 28
		<p>1 captain now.</p> <p>2 Q. Did you receive training materials for that, handouts, things along those lines?</p> <p>3 A. Yes.</p> <p>4 Q. Do you still have them?</p> <p>5 A. No.</p> <p>6 Q. That would have occurred back in 2013?</p> <p>7 A. Fourteen.</p> <p>8 Q. Fourteen. I thought you were hired by Dunbar December of 2013 you said.</p> <p>9 A. Yes.</p> <p>10 Q. How long after you were hired by Dunbar did you go to the Academy?</p> <p>11 A. I went to the Academy April of 2014.</p> <p>12 Q. Okay. Other than your one week defensive tactics course at the Academy, have you ever had any training with respect to use of force?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. What was that?</p> <p>15 A. Defensive tactics instructor course at the State Police Academy.</p> <p>16 Q. When was that?</p> <p>17 A. I don't recall specifically. If I had to guess, within two years ago.</p>

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<p style="text-align: right;">Page 29</p> <p>1   <b>Q. So within the last two years?</b></p> <p>2   A. Best I can remember.</p> <p>3   <b>Q. Would you say, for our purposes here, would</b> 4   <b>that have been before this May 2nd, 2020 incident or</b> 5   <b>after?</b></p> <p>6   A. Before.</p> <p>7   <b>Q. Okay. How long was that defensive tactics</b> 8   <b>instructor course?</b></p> <p>9   A. A week.</p> <p>10   <b>Q. Who taught that?</b></p> <p>11   A. Captain Petry and Sergeant Barker, I believe.</p> <p>12   <b>Q. Did you receive handouts or other materials</b> 13   <b>with that course?</b></p> <p>14   A. I believe so.</p> <p>15   <b>Q. Do you still have them?</b></p> <p>16   A. No.</p> <p>17   <b>Q. What happened to them?</b></p> <p>18   A. I don't know.</p> <p>19   <b>Q. Is it something you would have kept at the</b> 20   <b>time, you just didn't maintain or is it something they</b> 21   <b>took back after the course?</b></p> <p>22   A. I don't recall.</p> <p>23   <b>Q. Okay. Other than what you described so far,</b> 24   <b>any other training that you've received in your law</b></p>	<p style="text-align: right;">Page 31</p> <p>1   <b>surface? Did you receive any training for that?</b></p> <p>2   A. No.</p> <p>3   <b>Q. Have you ever received any training during</b> 4   <b>your time as a law enforcement officer on how to</b> 5   <b>immobilize someone's spine?</b></p> <p>6   A. Not that I recall.</p> <p>7   <b>Q. Have you received any training on proper</b> 8   <b>carrying techniques for accident victims that might</b> 9   <b>have a spinal injury?</b></p> <p>10   A. Not that I recall.</p> <p>11   <b>Q. Do you know if there are certain ways that</b> 12   <b>you're suppose to deal with someone who's a potential</b> 13   <b>spinal injury victim?</b></p> <p>14   A. When you say deal, what does that mean?</p> <p>15   <b>Q. So if you're going to move them, are there</b> 16   <b>certain things you've got to do?</b></p> <p>17   A. I would imagine so, but I've never received</p> <p>18   training in respect to that as far as law enforcement</p> <p>19   goes.</p> <p>20   <b>Q. Anybody from South Charleston ever give you</b> 21   <b>any type of training along those lines?</b></p> <p>22   A. No.</p> <p>23   <b>Q. Okay. So other than what we talked about so</b> 24   <b>far, including this expo, any other use of force</b></p>
<p style="text-align: right;">Page 30</p> <p>1   <b>enforcement career with respect to use of force?</b></p> <p>2   A. Not that I recall.</p> <p>3   <b>Q. Okay. With respect to medical issues, have</b> 4   <b>you received any training other than what you got at</b> 5   <b>the State Police Academy?</b></p> <p>6   A. At the expo I had a combat casualty care</p> <p>7   class.</p> <p>8   <b>Q. What's the expo?</b></p> <p>9   A. It's here at the Civic Center like around May</p> <p>10   or so just for law enforcement, first responders.</p> <p>11   <b>Q. Is this like a conference?</b></p> <p>12   A. Yeah.</p> <p>13   <b>Q. Is it something where it's just local people</b> 14   <b>or we have folks from all over the State or region or</b> 15   <b>what?</b></p> <p>16   A. For the most part local, just within the</p> <p>17   State.</p> <p>18   <b>Q. And you think you had some training there.</b> 19   <b>Tell me about that.</b></p> <p>20   A. It was, again, just kind of like the Academy</p> <p>21   stuff. Mainly for like gunshot wounds and lacerations,</p> <p>22   stuff like that. Treating, like, bleeding and chest</p> <p>23   wounds and stuff like that.</p> <p>24   <b>Q. What about injuries that can't be seen on the</b></p>	<p style="text-align: right;">Page 32</p> <p>1   <b>training that you received?</b></p> <p>2   A. Not that I recall.</p> <p>3   <b>Q. Okay. All right. So back to when you were in</b> 4   <b>Dunbar. You go to the State Police Academy. Did you</b> 5   <b>pass the course there?</b></p> <p>6   A. Yes.</p> <p>7   <b>Q. Okay and then you return to Dunbar as an</b> 8   <b>officer?</b></p> <p>9   A. Yes.</p> <p>10   <b>Q. What was your position in Dunbar?</b></p> <p>11   A. Patrolman.</p> <p>12   <b>Q. How long were you there?</b></p> <p>13   A. Around approximately three and a half years.</p> <p>14   <b>Q. Did Dunbar give you any type of training on</b> 15   <b>medical response and looking out for spinal victims,</b> 16   <b>things along those lines?</b></p> <p>17   A. Not that I recall.</p> <p>18   <b>Q. Did Dunbar give you any further training on</b> 19   <b>use of force?</b></p> <p>20   A. Not that I recall.</p> <p>21   <b>Q. The time that you were at Dunbar, did you have</b> 22   <b>any body cams?</b></p> <p>23   A. No.</p> <p>24   <b>Q. Did anyone at Dunbar have body cams?</b></p>

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<p style="text-align: right;">Page 33</p> <p>1 A. No.</p> <p>2 Q. Did anyone at Dunbar have dash cam?</p> <p>3 A. Yes.</p> <p>4 Q. Okay and how did the dash cam, when you were</p> <p>5 at Dunbar, work?</p> <p>6 A. Can you be more specific, like?</p> <p>7 Q. Yeah. How does it come on?</p> <p>8 A. It comes on whenever you turn your lights on.</p> <p>9 Lights, like, so when you turn your lights on 1, it's</p> <p>10 just rear lights, 2 is rear and front and 3 is both and</p> <p>11 siren. Whenever you go to 2, it will automatically</p> <p>12 engage, the camera will.</p> <p>13 Q. So if you put both your lights and your siren</p> <p>14 on it automatically engages?</p> <p>15 A. Both lights, front and back. You don't have</p> <p>16 to do the siren.</p> <p>17 Q. Okay.</p> <p>18 A. Just if you go to 2, it will automatically</p> <p>19 engage.</p> <p>20 Q. I see. So if you put both your lights on, the</p> <p>21 video recording system in the Dunbar cruisers would</p> <p>22 automatically engage?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Was that true your entire time at</p>	<p style="text-align: right;">Page 35</p> <p>1 Q. When did you get hired on there?</p> <p>2 A. May of 2017.</p> <p>3 Q. What was your position?</p> <p>4 A. Patrolman.</p> <p>5 Q. What is your position now?</p> <p>6 A. Patrolman.</p> <p>7 Q. Have you moved up in rank or anything at your</p> <p>8 time at South Charleston?</p> <p>9 A. Still the same rank.</p> <p>10 Q. Is that normal in the course of four years?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Have you had the same rate of pay your</p> <p>13 entire time at South Charleston?</p> <p>14 A. It goes up with steps.</p> <p>15 Q. What was it when you started in 2017?</p> <p>16 A. Best I can recall, 15.30.</p> <p>17 Q. It was what now?</p> <p>18 A. 15.30.</p> <p>19 Q. 15.30 how often?</p> <p>20 A. An hour.</p> <p>21 Q. So \$15.30 an hour?</p> <p>22 A. Yes.</p> <p>23 Q. Okay and what is your pay now?</p> <p>24 A. 17.16, I believe, an hour.</p>
<p style="text-align: right;">Page 34</p> <p>1 Dunbar?</p> <p>2 A. No. I don't really recall specifically, but I</p> <p>3 think after a year or two some of the other cruisers</p> <p>4 may not have had them, but I don't recall specifically.</p> <p>5 Q. Were you ever given a cruiser during your time</p> <p>6 at Dunbar that didn't have dash cam?</p> <p>7 A. I believe so.</p> <p>8 Q. How long was that for?</p> <p>9 A. You never were -- you never really were given</p> <p>10 a cruiser. It would just be at the station, you would</p> <p>11 share.</p> <p>12 Q. Okay, so you weren't assigned a specific</p> <p>13 cruiser?</p> <p>14 A. For the most part no, but sometimes you would</p> <p>15 for a few months, but it would change often.</p> <p>16 Q. The ones that weren't working when you were at</p> <p>17 Dunbar, was that something that had a technical</p> <p>18 malfunction, were the cameras removed?</p> <p>19 A. Best I remember they may not have been there,</p> <p>20 but it's been a long time.</p> <p>21 Q. How long were you at Dunbar again?</p> <p>22 A. About three and a half years.</p> <p>23 Q. And from Dunbar, what was your next job?</p> <p>24 A. South Charleston Police Department.</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Do you get overtime?</p> <p>2 A. Yes.</p> <p>3 Q. What are you paid for overtime?</p> <p>4 A. Time and a half for that.</p> <p>5 Q. Are you single or married?</p> <p>6 A. Married.</p> <p>7 Q. Do you have any kids?</p> <p>8 A. Yes.</p> <p>9 Q. How many?</p> <p>10 A. One.</p> <p>11 Q. How old?</p> <p>12 A. Almost two.</p> <p>13 Q. Does your wife work?</p> <p>14 A. No.</p> <p>15 Q. Who hired you at South Charleston?</p> <p>16 A. The chief at the time, Brad Rinehart.</p> <p>17 Q. How did that come about where you left Dunbar</p> <p>18 and went to South Charleston?</p> <p>19 A. Like why did I leave?</p> <p>20 Q. Yeah.</p> <p>21 A. More opportunity, bigger department.</p> <p>22 Q. Was that something that you took a test for</p> <p>23 with South Charleston or you just talked to somebody or</p> <p>24 how does that --</p>

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<p style="text-align: right;">Page 37</p> <p>1 A. Same process. You have to go through the same 2 process whether you're certified or not. You have to 3 take the physical, written and then score high enough 4 to get hired.</p> <p>5 Q. How often do they offer that test?</p> <p>6 A. These days every few months.</p> <p>7 Q. Because they're trying to find people?</p> <p>8 A. Yeah, I'd say six months, eight months.</p> <p>9 Q. How many, approximately, how many officers 10 were employed with Dunbar?</p> <p>11 A. They were slotted for 16, but around when I 12 left 10 or 9.</p> <p>13 Q. How many officers are employed with South 14 Charleston?</p> <p>15 A. Around 50.</p> <p>16 Q. Has that been about the number since you've 17 been there?</p> <p>18 A. Forty-five, fifty.</p> <p>19 Q. Do they have difficulty hiring people?</p> <p>20 A. I would assume. I don't know specifically, 21 but I'd imagine so.</p> <p>22 Q. Well, I know you said around, you know, now 23 you're seeing these tests being run every few months 24 and I'm aware those tests are generally run when they</p>	<p>1 Unit?</p> <p>2 A. A few months.</p> <p>3 Q. In your time with the Metro Drug Unit, do you 4 work sort of hand in hand with the DEA?</p> <p>5 A. We walk along side each other. You don't 6 really see them too too much, but, yeah, we'll help 7 each other out.</p> <p>8 Q. Do a lot of your cases end up being prosecuted 9 through the US Attorney's Office?</p> <p>10 A. Mine specifically not yet just because it's 11 been a few months.</p> <p>12 Q. The Metro Drug Unit in general?</p> <p>13 A. Yeah, uh-huh.</p> <p>14 Q. Okay. And I asked you if you'd ever given a 15 deposition earlier and you said no; right?</p> <p>16 A. Uh-huh.</p> <p>17 Q. Is that a yes?</p> <p>18 A. Correct. Sorry.</p> <p>19 Q. She's taking things down and I'm awful about 20 that, but if we don't do the yes and nos it will be a 21 problem. Have you testified in court proceedings 22 before?</p> <p>23 A. Yes.</p> <p>24 Q. Have you testified in magistrate court?</p>
<p style="text-align: right;">Page 38</p> <p>1 need to get the list updated so they can make hiring 2 decisions.</p> <p>3 Is that something that's increased, the frequency 4 of the test and the hiring process, from the time 5 you've been at South Charleston?</p> <p>6 A. Yeah.</p> <p>7 Q. Tell me about the chain of command at South 8 Charleston. Do you have a direct supervisor? How does 9 that work?</p> <p>10 A. Me specifically or just like in general?</p> <p>11 Q. Well, let's start at the top. Just walk me 12 through from the chief on down.</p> <p>13 A. The chief and then two captains and then you 14 have around four lieutenants or so and then you have 15 sergeants, corporals and then patrolmen.</p> <p>16 Q. Do you have a direct supervisor that you 17 report to?</p> <p>18 A. Me specifically, I report to Captain Rader 19 because I'm in a specialized unit.</p> <p>20 Q. You're in a specialized unit?</p> <p>21 A. Yes.</p> <p>22 Q. What kind of drug is that?</p> <p>23 A. The Metro Drug Unit.</p> <p>24 Q. How long have you been with the Metro Drug</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Yes.</p> <p>2 Q. Have you testified in circuit court?</p> <p>3 A. No.</p> <p>4 Q. Have you ever testified in Federal Court?</p> <p>5 A. No.</p> <p>6 Q. Have you testified in City court?</p> <p>7 A. Dunbar, yes. South Charleston, no.</p> <p>8 Q. About how many times would you say that you've 9 testified in a court proceeding?</p> <p>10 A. Thirty approximately.</p> <p>11 Q. Would majority of those be in magistrate 12 court?</p> <p>13 A. Uh-huh.</p> <p>14 Q. Yes?</p> <p>15 A. Yes.</p> <p>16 Q. Backing up to the State Police Academy, during 17 your time there, were you trained in vehicular 18 pursuits?</p> <p>19 A. Yes.</p> <p>20 Q. And how so?</p> <p>21 A. A lot of it was driving. Like you put up 22 cones in the parking lot and do, like, driving courses.</p> <p>23 Q. At the State Police Academy itself?</p> <p>24 A. Yeah.</p>

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1 Q. Is that something where an officer would ride  
2 along with you and kind of give you tips or how did  
3 that happen?

4 A. Best I can recall, yeah, I think the  
5 instructor will ride with you and give you tips and  
6 then at the end of it you have to do the obstacle  
7 course in so much time.

8 Q. Was there a classroom portion to that?

9 A. I believe so.

10 Q. Do you know if there were materials that you  
11 received?

12 A. I don't recall.

13 Q. You don't have any of those today if there  
14 were, do you?

15 A. No.

16 Q. Okay. Were you trained on when it was  
17 appropriate to engage in a vehicular pursuit?

18 A. At the Academy?

19 Q. Yes.

20 A. Not that I recall.

21 Q. Have you ever been trained on when it's  
22 appropriate to engage in a vehicular pursuit?

23 A. Trained? No. I mean, you'll talk about it  
24 with your supervisors.

1 Q. So regardless of the crime, you could pursue,  
2 for instance, a traffic offense, regardless of the  
3 level of the offense, if the circumstances to your  
4 personal belief were -- seemed okay?

5 A. Yes.

6 Q. Tell me about the process if you engage in a  
7 vehicular pursuit, what do you need to do?

8 A. You mark out with Metro that you have a  
9 pursuit going and then just start calling out where  
10 you're at.

11 Q. Who's in charge of calling out where you're  
12 at?

13 A. If it's just you by yourself obviously you,  
14 but if there's two or more, a lot of times it would be  
15 the second car.

16 Q. Is there any discussion made with a  
17 supervising officer during a pursuit?

18 A. What do you mean by discussion?

19 Q. Over the radio. Do you talk to a supervisor  
20 and tell them what you're doing?

21 A. A lot of times they just listen to it so a lot  
22 of times they won't talk back because then that would  
23 tie up the radio. If they jumped out and bailed then  
24 you wouldn't be able to say where you're at and what's

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1 Q. Okay. What will you talk about?

2 A. Like, you know, the seriousness of what's  
3 going on and then like just making sure you know what's  
4 going around you and how pursuits always change, the  
5 dynamic.

6 Q. What about in terms of when to pursue  
7 somebody?

8 A. No, not that I recall.

9 Q. Okay. Well, to the best of your understanding  
10 then, if no one's directly trained you on it, are there  
11 times where you should pursue and times where you  
12 should not?

13 A. Yes.

14 Q. And how do you make that decision?

15 A. Just the same dynamics, the seriousness of the  
16 crime, the time of day, how much traffic there is and  
17 it's always changing.

18 Q. For seriousness of the crime, how serious does  
19 the crime need to be to pursue somebody, for instance,  
20 above the speed limit?

21 A. That wouldn't be the only part. It just  
22 depends when it is, what's going on around you. The  
23 crime itself is not the only thing, it's the totality  
24 of the circumstances.

1 going on.  
2 Q. So you don't need approval from the supervisor  
3 in South Charleston in order to pursue somebody in a  
4 vehicle?

5 A. Correct.

6 Q. How many vehicular pursuits would you say  
7 you've been involved in in your law enforcement time?

8 A. Approximately 20, 30, I don't know.

9 Q. About how many with South Charleston?

10 A. Approximately 10, 15, I don't know.

11 Q. I understand you're just kind of giving me  
12 your best estimate and that's what I'm asking you for,  
13 okay?

14 A. Yeah.

15 Q. Have you ever been involved in a vehicular  
16 pursuit other than the one we're going to talk about in  
17 a little bit with Officer, and I don't know, maybe it's  
18 Sergeant Peterson?

19 A. Yes.

20 Q. How many other vehicle pursuits have you been  
21 involved in with him?

22 A. Just a handful, I don't know.

23 Q. About how many times have you used pepper  
24 spray on someone?

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<p>1 A. Five to ten. I don't recall specifically.</p> <p>2 Q. Okay. That's kind of a bigger range and I 3 understand this has been over a period of time, but as 4 best you can, walk me through what you remember about 5 the incidents you've used pepper spray.</p> <p>6 Let's not talk about this one with Mr. Means yet, 7 we'll talk about that in a little bit. But walk me 8 through the first time you had to use pepper spray on 9 someone.</p> <p>10 A. I couldn't go through them all, I don't know.</p> <p>11 Q. You don't remember the specifics of it?</p> <p>12 A. I can tell you the last time I did. A male 13 ran from us and wouldn't put his hands behind his back.</p> <p>14 Q. Okay. Tell me about that. So he ran from 15 you. What was the crime?</p> <p>16 A. The call was a male, like, banging on 17 somebody's back door and when we got there as soon as 18 he saw us he took off running away from us, tried to 19 take him to the ground, told him put his hands behind 20 his back and he wouldn't. He was intoxicated.</p> <p>21 Q. Before you pepper sprayed him to get him to 22 put his hands behind his back, did you use any other 23 tactics first?</p> <p>24 A. Just tried to go hands-on, put his hands</p>	Page 45	<p>1 A. Around a year ago. I don't recall 2 specifically.</p> <p>3 Q. Would it have been before the incident with 4 Billy Means or after?</p> <p>5 A. Maybe before, I don't know.</p> <p>6 Q. Do you recall using pepper spray on anybody 7 since the time with Billy Means?</p> <p>8 A. Not that I recall.</p> <p>9 Q. When you use force in your time as a law 10 enforcement officer, are you required to fill out a 11 report?</p> <p>12 A. Like a use of force report?</p> <p>13 Q. Yes.</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Is that true any time you use force on 16 a suspect?</p> <p>17 A. Yes. Well, let's -- sorry. When you say 18 force, what do you mean exactly? Does that mean just 19 grabbing somebody and forcing their arms behind their 20 back or do you mean taking them to the ground?</p> <p>21 Q. Well, I'm asking you about when you use a 22 chemical agent, when you use a taser, when you take 23 someone to the ground, when you are in a situation 24 where you would have to, for instance, put your knee on</p>	Page 47
<p>1 behind his back and couldn't get him.</p> <p>2 Q. What do you mean by hands-on?</p> <p>3 A. Like grabbing his arms and hands and trying to 4 put his arms behind his back.</p> <p>5 Q. When you say we, who you are talking about?</p> <p>6 A. Me and another.</p> <p>7 Q. So the two of you tried to get his hands 8 behind his back and you couldn't?</p> <p>9 A. Correct.</p> <p>10 Q. Did you apply any kind of pressure to his arms 11 or other means other than the pepper spray?</p> <p>12 A. Pressure to his arms, what's that mean?</p> <p>13 Q. So did you try to use any type of physical 14 restraint of him that would cause him discomfort to 15 make him comply?</p> <p>16 A. I don't know what that means. Like pressure 17 points?</p> <p>18 Q. Yeah, did you try pressure points, did you 19 jerk his arm around, did you try to --</p> <p>20 A. Tried to put his arm behind his back with 21 force, but couldn't.</p> <p>22 Q. Okay. How big was this guy?</p> <p>23 A. I don't recall.</p> <p>24 Q. About when was this?</p>	Page 46	<p>1 somebody or take them down, something along those 2 lines. You tell me. What's the dividing line? When 3 do you have to fill out one of these reports?</p> <p>4 A. For the most part just like you said, when you 5 take somebody down. Like if you take them down and 6 there's any type of injuries or anything or from there 7 you use chemical agents, anything like that, then you 8 would.</p> <p>9 Q. Have you ever arrested somebody where they 10 needed medical care afterwards that you didn't fill out 11 a use of force report on?</p> <p>12 A. Not that I recall.</p> <p>13 Q. Okay.</p> <p>14 A. But there could be a time when they harm them 15 self and then I wouldn't.</p> <p>16 Q. Understood. I assume there could be a time 17 where somebody could have a heart attack or something 18 and you wouldn't necessarily need to fill out a use of 19 force report, but if you take someone to the ground, 20 you're suppose to fill out a use of force report?</p> <p>21 A. For the most part. I mean, if it was real 22 easy and you went to the ground and there were no 23 injuries or anything then you probably wouldn't.</p> <p>24 Q. Okay. If there were injuries and the person</p>	Page 48

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<p>1 had to get medical care and you've taken them down to  2 the ground, are you suppose to put that in your use of  3 force report?  4 A. Suppose to put that they had injuries?  5 Q. Yeah.  6 A. Yeah.  7 Q. Are you suppose to put the type of force that  8 you used?  9 A. Yeah.  10 Q. I've asked you about pepper spraying. What  11 about tasers? Have you ever had to use a taser on  12 somebody?  13 A. At Dunbar I attempted to use one and it was  14 ineffective.  15 Q. How did that come about? How was it  16 ineffective?  17 A. I shot the taser and it didn't do anything.  18 Q. Okay. Is that the only time you've ever tried  19 to use a taser?  20 A. Yes.  21 Q. Did you receive training for taser use at the  22 State Police Academy?  23 A. No.  24 Q. Where did you receive training, if ever?</p>	Page 49	<p>1 criminal investigation?  2 A. No.  3 Q. If you use your taser you're required to fill  4 out a use of force report; right?  5 A. Yeah.  6 Q. Let's move into May of 2020. What kind of  7 shift were you on on May 2nd of 2020?  8 A. Day shift, 6:00 a.m. to 6:00 p.m.  9 Q. Okay. And how long had you been on day shifts  10 at that point, if you recall?  11 A. Do you know what day of the week it was,  12 Saturday or Sunday?  13 Q. I do not off the top of my head.  14 A. Well, if it was one of those we worked day  15 shift Friday, Saturday, Sunday.  16 Q. Okay. Explain that to me. How do the shifts  17 work at South Charleston?  18 A. So starting on Friday night you do four  19 nights, which it's 6:00 to 6:00 either way and so  20 6:00 p.m. to 6:00 a.m., so four nights 6:00 to 6:00.  21 Then you're off three days. You work three day  22 shifts, so 6:00 a.m. to 6:00 p.m.. Then you're off one  23 day.  24 Q. Okay.</p>	Page 51
<p>1 A. Dunbar and then South Charleston.  2 Q. Okay. Tell me about that training at Dunbar  3 on taser use.  4 A. You go over the taser, obviously, and then you  5 talk a little bit about when you can and can't use it  6 and then you'll shoot it at like a box or whatever,  7 just shows about the spread, how far away you can be.  8 Q. What about at South Charleston, what was the  9 training like there?  10 A. The same, but you got tased.  11 Q. You got tased yourself?  12 A. Uh-huh.  13 Q. Okay. When you did it who tased you?  14 A. Messer.  15 Q. Is that the only time you've ever been tased?  16 A. Yes.  17 Q. I'm going to assume you've never been arrested  18 yourself?  19 A. No.  20 Q. Okay. You don't have any criminal history, do  21 you?  22 A. No.  23 Q. Other than this FBI investigation into you,  24 have you ever, to your knowledge, been the subject of a</p>	Page 50	<p>1 A. Then you work three nights. Then you're off  2 three days. Then you work four day shifts. Then  3 you're off seven.  4 Q. Then does it start over?  5 A. Uh-huh.  6 Q. Okay. Has that pretty much been true your  7 whole time at South Charleston?  8 A. Yeah.  9 Q. So that would have been the type of shift  10 somewhere in there on a day shift?  11 A. Yeah, those three days.  12 Q. Okay.  13 A. The weekend day shifts, whatever.  14 Q. And you would have come on about 6:00 a.m. on  15 May 2nd?  16 A. Uh-huh.  17 Q. Tell me about that process. How do you come  18 on?  19 MR. RUGGIER: Say yes or no.  20 Q. How do you come on shift? What are you  21 suppose to do when you start out your day shift?  22 A. Just mark on duty on the radio and then before  23 COVID you would go to station for shift change, which  24 really just they might -- night shift might say what</p>	Page 52

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<p>1 they had the night before, but past COVID you just 2 start working. Just start taking calls for day shift 3 or for the last shift, that way they can go home.</p> <p>4 <b>Q. Are there areas of the City you're assigned 5 to?</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. How does that work?</b></p> <p>8 A. Just rotates. It's east, west and south.</p> <p>9 <b>Q. Okay.</b></p> <p>10 A. Jefferson Road splits it and south is just 11 like, you know, Southridge area.</p> <p>12 <b>Q. Okay. You say Jefferson Road splits it.</b></p> <p>13 <b>Describe where is the east, the west and the south 14 generally?</b></p> <p>15 A. So Jefferson Road splitting the east and the 16 west. The east is just like the station and all that, 17 like the Montrose, The Flats and all that and then west 18 stops at like Rock Lake and all that.</p> <p>19 <b>Q. And then south is basically out Jefferson 20 Road?</b></p> <p>21 A. Yeah. Once you start Jefferson Road, just 22 everything out that way.</p> <p>23 <b>Q. Okay. On May 2nd, 2020, do you know which one 24 you were assigned to?</b></p>	Page 53	<p>1 <b>Q. Has that been true your entire time at South 2 Charleston?</b></p> <p>3 A. Yes.</p> <p>4 <b>Q. Do you know it was talked about several years 5 ago about getting dash cam and body cam in South 6 Charleston?</b></p> <p>7 A. No, not that I recall.</p> <p>8 <b>Q. Has anyone ever talked to you about getting 9 those things in place in South Charleston?</b></p> <p>10 A. Not that I recall. Recently, like here within 11 the past couple months, I think they are.</p> <p>12 <b>Q. So since May 2nd, 2020 it's been talked about, 13 but not before that time?</b></p> <p>14 A. Best I can recall and then the only caveat to 15 that is I do have a dash cam in my car, it's a South 16 Charleston cruiser, but it's assigned to MDENT and the 17 two interdiction cars have dash -- have dash cams.</p> <p>18 <b>Q. Because you're assigned to MDENT you now have 19 dash cam?</b></p> <p>20 A. Yes.</p> <p>21 <b>Q. May 2nd, 2020, the cruiser you would have had 22 at that time did not have dash cam?</b></p> <p>23 A. Correct.</p> <p>24 <b>Q. And you didn't have body cam at that time</b></p>
<p>1 A. No.</p> <p>2 <b>Q. Okay. Do you remember that morning?</b></p> <p>3 A. Yes.</p> <p>4 <b>Q. Do you know what time you would have -- would 5 you have gone to the station?</b></p> <p>6 A. I don't recall.</p> <p>7 <b>Q. Okay. Well, it was May of 2020 so based on 8 what you said earlier I'm going to assume COVID was 9 going on?</b></p> <p>10 A. Probably not.</p> <p>11 <b>Q. Okay. Would you have already had a cruiser at 12 your house?</b></p> <p>13 A. Yeah, we have take home cruisers.</p> <p>14 <b>Q. How are those assigned? Does everybody get to 15 take one home?</b></p> <p>16 A. Yes.</p> <p>17 <b>Q. How many cruisers does South Charleston have?</b></p> <p>18 A. I would imagine 45, but I don't know for sure.</p> <p>19 <b>Q. Enough for everybody to take one home; right?</b></p> <p>20 A. And extra, spare, whatever, so, yeah, maybe 21 50.</p> <p>22 <b>Q. Okay. Do any of the cruisers have dash cam at 23 South Charleston?</b></p> <p>24 A. No.</p>	Page 54	<p>1 <b>either; right?</b></p> <p>2 A. Correct.</p> <p>3 <b>Q. Have you ever worn a body cam in your time as 4 a law enforcement officer?</b></p> <p>5 A. No.</p> <p>6 <b>Q. Other than your time now assigned to the Metro 7 Drug Unit, during your whole time at South Charleston 8 you never had a dash cam in a vehicle, have you?</b></p> <p>9 A. I had my own camera.</p> <p>10 <b>Q. You do?</b></p> <p>11 A. I did. I had it for -- a couple people, 12 Peterson as well, bought them ourselves and put them in 13 the cruiser and then sometime after that we received an 14 e-mail telling us not to have our own personal ones.</p> <p>15 <b>Q. Okay. So you and Peterson and others or just 16 the two of you?</b></p> <p>17 A. Definitely a few others.</p> <p>18 <b>Q. A few others?</b></p> <p>19 A. Yeah.</p> <p>20 <b>Q. All got your own cameras set up. What kind of 21 camera?</b></p> <p>22 A. I think it was Anchor brand. Just something 23 from Amazon.</p> <p>24 <b>Q. Okay, but like a dash mounted camera?</b></p>

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<p>1 A. Yeah, like one you put on your own personal 2 vehicle.</p> <p>3 Q. Would it record and then you could download 4 that onto a phone or something?</p> <p>5 A. It had like an SD card and you could pull it 6 out and put it on the computer.</p> <p>7 Q. Okay. About when did you get those?</p> <p>8 A. I don't recall, but if I had to give a year, 9 2018 or '19.</p> <p>10 Q. Okay, but definitely prior to May 2nd of 2020?</p> <p>11 A. Yes.</p> <p>12 Q. All right, so you guys got these. Did 13 everyone go together and get them on Amazon, how did 14 that work?</p> <p>15 A. No, just kind of did it on your own.</p> <p>16 Q. If you went back through your Amazon history, 17 would you be able to see when you bought it?</p> <p>18 A. Yeah.</p> <p>19 Q. Okay. Is that something you could do?</p> <p>20 A. Yeah.</p> <p>21 Q. You could provide that to your counsel to get 22 to us?</p> <p>23 A. Uh-huh.</p> <p>24 Q. Is that a yes?</p>	<p>Page 57</p> <p>1 A. Approximately six months.</p> <p>2 Q. Now, it wasn't a secret during those six 3 months that you all had these things, was it?</p> <p>4 A. No.</p> <p>5 Q. Would you, if you arrested somebody, would you 6 tell them that there's video?</p> <p>7 A. No.</p> <p>8 Q. But the people in the Department knew there 9 was video?</p> <p>10 A. Yeah.</p> <p>11 Q. And that would have been everybody up to the 12 chief would have known you all were doing this; right?</p> <p>13 A. Yeah.</p> <p>14 Q. So after about six months of you personally 15 having the camera, you get an e-mail from Chief 16 Rinehart saying all the cameras for the whole 17 Department, get the dash cams out?</p> <p>18 A. The personal ones, yes.</p> <p>19 Q. Well, there's no others, are there?</p> <p>20 A. Correct.</p> <p>21 Q. Okay, so by taking the personal ones out, 22 that's all the cameras; right?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. Did you have a conversation with</p>
<p>1 A. Yes.</p> <p>2 Q. That's the difference between this and 3 magistrate court is nobody's taking anything down over 4 there. So you said you got an e-mail at some point. 5 Was that just to you or to everybody?</p> <p>6 A. The Department.</p> <p>7 Q. Who was the e-mail from?</p> <p>8 A. The chief, Brad Rinehart.</p> <p>9 Q. What did it say?</p> <p>10 A. To sum it up, just saying I know some people 11 have been using their own personal dash cams and due 12 to, like, chain of custody and evidence concerns not to 13 do that. I mean, I don't know specifically what it 14 was, but to sum it up would be that.</p> <p>15 Q. Do you still have e-mail?</p> <p>16 A. Yeah.</p> <p>17 Q. Okay. Is that something you could get for us 18 and provide to your counsel?</p> <p>19 A. Yeah.</p> <p>20 Q. Great. About when did that e-mail come, do 21 you know?</p> <p>22 A. If I had to guess it would be 2019.</p> <p>23 Q. Let me ask you this: About how long did you 24 have the camera in the cruiser?</p>	<p>Page 58</p> <p>1 anybody about the cameras being removed?</p> <p>2 A. No.</p> <p>3 Q. Why did you guys put cameras in to begin with?</p> <p>4 A. Just the same reason you'd have them in 5 general. Just so you can document what's going on or 6 whatever.</p> <p>7 Q. There's no question mark; right? There's no 8 way to fudge that. You would know what happened in an 9 arrest or a pursuit or something along those lines if 10 you had video footage; right?</p> <p>11 A. Yes.</p> <p>12 Q. And that was something you thought was 13 important enough to spend your own money, when you were 14 making somewhere between \$15.00 to \$17.00 an hour, to 15 buy?</p> <p>16 A. Yes.</p> <p>17 Q. No one from South Charleston Police Department 18 provided any type of dash cam or other recording 19 camera, did they?</p> <p>20 A. No.</p> <p>21 Q. Did any of the officers that had these 22 complain when they were told to take them out?</p> <p>23 A. Not to my knowledge.</p> <p>24 Q. Do you know if it's ever been discussed at</p>

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<p style="text-align: right;">Page 61</p> <p>1 <b>City Council at South Charleston about, prior to this</b>      2 <b>last -- since this incident, about getting dash cam or</b>      3 <b>body cam?</b>      4 A. Not to my knowledge.      5 Q. <b>Have you ever attended a South Charleston City</b>  <b>Council meeting?</b>      6 A. Just when you have to be there to get sworn      7 in. Other than that, no.      8 Q. <b>Okay. Hey, you know what, I told you we'd</b>      9 <b>take a break about every hour. We've been going about</b>      10 <b>an hour. Let's take a break.</b>      11 A. Okay.      12 VIDEO OPERATOR: Time is 10:02 a.m.      13 We're off the record.      14 (A brief recess was taken after which the      15 deposition continued as follows:)      16 VIDEO OPERATOR: Time is 10:26 a.m.      17 We're on the record.      18 BY MR. FORBES:      19 Q. <b>All right, Officer Harvey, right before we</b>      20 <b>took the break we were talking about those dash cams</b>      21 <b>that you personally -- all right, before we took the</b>      22 <b>break I was asking you, we were talking a little bit</b>      23 <b>about the dash cam that you bought yourself with your</b></p>	<p>1 A. Yeah.      2 Q. <b>Do you still have your SD cards?</b>      3 A. Maybe somewhere. I don't know.      4 Q. <b>I'm going to hand you --</b>      5 MR. FORBES: Duane, I don't have extra      6 copies of this if you want to look at it real quick.      7 Here, she's got to mark it. Is that Number 2?      8 HARVEY DEPOSITION EXHIBIT NO. 2      9 (2015 Charleston Gazette      10 Article was marked for identification      11 purposes as Harvey Deposition Exhibit No.      12 2.)      13 Q. <b>Take a read on that, Officer.</b>      14 MR. RUGGIER: I want to just object to      15 the questioning over issues which are not involved in      16 this lawsuit, but are more directed toward the City of      17 South Charleston who's no longer a defendant.      18 MR. FORBES: Well, your objection is      19 noted.      20 A. Okay.      21 Q. <b>Okay. Did you get a chance to read that?</b>      22 A. I skimmed it, yes.      23 Q. <b>All right. Let me see it back from you. It's</b>      24 <b>a 2015 article from the Charleston Gazette; right?</b></p>
<p style="text-align: right;">Page 62</p> <p>1 own money off Amazon. You said the e-mail you got from      2 Chief Rinehart indicated they had concerns about chain      3 of custody.      4 A. Yeah, for the evidence. Like, you know, who's      5 maintaining those records, like as far as who's      6 downloading the videos and getting it to court and all      7 that.      8 Q. Did anyone from South Charleston offer to you,      9 say, hey, we'll just make a repository, bring us your      10 SD cards and we'll upload it all onto the computer      11 network?      12 A. No.      13 Q. Did anyone give you any options for how to      14 preserve that evidence?      15 A. No.      16 Q. Are you aware of any cases where the video      17 evidence was lost?      18 A. No.      19 Q. Any cases you had in particular, anyone ask      20 for in discovery, hey, where's that video evidence and      21 you said, well, I deleted my SD card or something like      22 that?      23 A. No.      24 Q. Do you still have the camera?</p>	<p>1 A. Okay.      2 Q. All right and it indicates, it's an article      3 entitled Body Cameras for Police Officers on Rise in      4 West Virginia. It's got some quotes from Bob Houck who      5 at the time was Charleston's assistant chief of police.      6 Do you know Bob Houck?      7 A. Yes.      8 Q. Is he still there?      9 A. Yes.      10 Q. Is he still the assistant chief of police?      11 A. No.      12 Q. Okay. What's his position now?      13 A. Sergeant on a shift, running a shift.      14 Q. He said in this article the Department, "South      15 Charleston Department would soon be getting body      16 cameras, but hasn't made a decision yet on which one."      17 He said and quoted, "The Mayor wants us to have them.      18 He's concerned with everything going on. South      19 Charleston mayor, Frank Mullens, says he's been an      20 advocate of putting cameras on officers for a number of      21 years, but said current events show the need is clear."      22 "A couple of years ago there was a complaint. Two      23 sides are always opposite. If we'd had the camera on,      24 we would have known what was going on, Mullens said. I</p>

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<p style="text-align: right;">Page 65</p> <p>1 think what's going on around the country highlights the 2 needs for cameras. It's good for everybody. It's good 3 for the police and good for the citizens. I can't see 4 a negative thing about it."</p> <p>5 That's from the mayor of South Charleston in 2015. 6 Is that generally the reason you went out and got a 7 dash cam on your own is because you wanted to make sure 8 that the video showed what really happened in these 9 encounters?</p> <p>10 A. Yes.</p> <p>11 Q. And the video would be the real story; right?</p> <p>12 A. Yes.</p> <p>13 Q. There's not two sides to a video, are there?</p> <p>14 A. Correct.</p> <p>15 Q. "Houck mentioned that officers had concerns 16 when they first brought a body cam model in for 17 testing. They were at first like big brother, y'all 18 are trying to watch everything we're doing. Now they 19 kind of get it, Houck said. They started liking the 20 idea. Supervisors liked it because it keeps the 21 officers in check and could dispel any complaints we 22 might get."</p> <p>23 "Officers have told people on traffic stops that 24 they are filming the interactions, Houck said. The</p>	<p>1 Q. All right. Officer Harvey, let's talk about 2 that May 2nd incident. I want to hand you what we're 3 going to mark as Number 3.</p> <p>4 HARVEY DEPOSITION EXHIBIT NO. 3</p> <p>5 (Case Report was marked 6 for identification purposes as Harvey 7 Deposition Exhibit No. 3.)</p> <p>8 MR. RUGGIER: Can't move it to Thursday. 9 'I've got my daughter Tuesday through Sunday. I have 10 to get her and make arrangements.' They can't do it on 11 Thursday.</p> <p>12 MR. FORBES: Is there another day he can 13 do it? Go off the record a second.</p> <p>14 VIDEO OPERATOR: Time 10:35 a.m. We're 15 off the record.</p> <p>16 (An off the record discussion was held 17 after which the deposition continued as follows:)</p> <p>18 VIDEO OPERATOR: Time is 10:37 a.m. 19 We're on the record.</p> <p>20 BY MR. FORBES:</p> <p>21 Q. Officer Harvey, I handed you what's marked as 22 Exhibit 3. Do you recognize that?</p> <p>23 A. Yes.</p> <p>24 Q. What is it?</p>
<p style="text-align: right;">Page 66</p> <p>1 officers have had cameras in their vehicles for years, 2 but in their latest round of police vehicle purchases 3 they didn't choose that add on, Houck said. The 4 Department recently purchased ten new vehicles, but 5 didn't include in car cameras. The plan is to buy 40 6 cameras for each of the Department's officers."</p> <p>7 "Mullens said the mayor said he could see any 8 initial concerns the officers might have, but hopes 9 that they would see the cameras as more of a tool. The 10 camera doesn't lie, he said. Quite frankly, if you're 11 not doing anything wrong, you don't have anything to 12 hide." Did you know that South Charleston used to have 13 dash cams in the cruisers?</p> <p>14 A. I think so. Yeah, I think I've heard people 15 talk about it.</p> <p>16 Q. Do you know why they were removed?</p> <p>17 A. No.</p> <p>18 Q. And then you go out on your own, get a dash 19 cam, put it in the cruiser, chief says get them out of 20 there.</p> <p>21 A. Correct.</p> <p>22 Q. Do you agree with the mayor's comments there 23 that the video doesn't lie?</p> <p>24 A. Correct.</p>	<p style="text-align: right;">Page 68</p> <p>1 A. A case report.</p> <p>2 Q. Case report from what?</p> <p>3 A. The incident on May 2nd.</p> <p>4 Q. Involving William Means?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Flip over to Page 12.</p> <p>7 A. Okay.</p> <p>8 Q. Page 12 through 13 has a narrative report. 9 Whose narrative is that?</p> <p>10 A. Mine.</p> <p>11 Q. Okay. Did you write this?</p> <p>12 A. Yes.</p> <p>13 Q. When did you write it?</p> <p>14 A. That day I believe.</p> <p>15 Q. Okay. The first paragraph indicates that "On 16 May 2nd, 2020 Corporal Peterson initiated a pursuit on 17 119 at Trace Fork. The pursuit went for a few minutes 18 and I waited for it to pass me on Rabel Mountain at 19 Split Rail Drive." Were you already on Rabel Mountain 20 or where were you that morning?</p> <p>21 A. That morning I think when he marked out with 22 the pursuit I was on Jefferson Road, City garage.</p> <p>23 Q. Okay, so you got to the City garage out to 24 Rabel Mountain Road where you met up with the pursuit;</p>

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<p>1 right?</p> <p>2 A. Correct.</p> <p>3 Q. Then it says "After they passed me, I backed</p> <p>4 up Corporal Peterson in the pursuit and was the second</p> <p>5 car and called the radio traffic." Is that right?</p> <p>6 A. Correct.</p> <p>7 Q. "We went left on Brounland Road and then</p> <p>8 ultimately on Emmons Drive which turned into Dartmouth</p> <p>9 Ashford Road. The entire duration of the pursuit the</p> <p>10 driver continued to look back at us and see if we were</p> <p>11 still chasing him." That would be the driver, Billy</p> <p>12 Means, was on a motorcycle; right, is that who you're</p> <p>13 talking about?</p> <p>14 A. Correct.</p> <p>15 Q. "He was also going at a high rate of speed</p> <p>16 around blind curves." That's dangerous; right?</p> <p>17 A. Yes.</p> <p>18 Q. To go a high rate of speed around blind</p> <p>19 curves?</p> <p>20 A. Yes.</p> <p>21 Q. That would be dangerous not just for the</p> <p>22 driver of a vehicle, but dangerous for potentially for</p> <p>23 other citizens that might come around in their cars;</p> <p>24 right?</p>	Page 69	<p>1 didn't see the actual crash, but saw water splash." So</p> <p>2 you didn't see the crash of the motorcycle; is that</p> <p>3 right?</p> <p>4 A. Correct.</p> <p>5 Q. Did you see the alleged loss of control of the</p> <p>6 motorcycle that lead to the crash?</p> <p>7 A. No.</p> <p>8 Q. Okay, so were you far enough back then in this</p> <p>9 pursuit that you couldn't see exactly what happened to</p> <p>10 Mr. Means on the motorcycle that caused the crash?</p> <p>11 A. Correct.</p> <p>12 Q. Okay, so as we sit here today, you can't offer</p> <p>13 any testimony about what the cause of the crash was,</p> <p>14 can you, from personal knowledge?</p> <p>15 A. I could speculate that it was speed related.</p> <p>16 Q. Okay. And that would be pure speculation;</p> <p>17 correct?</p> <p>18 A. Not necessarily because on that straightaway</p> <p>19 the speeds got up to about 60 and then --</p> <p>20 Q. Let me get this straight. So the speeds --</p> <p>21 you guys are following this guy in a -- was this is a</p> <p>22 25 mile an hour zone?</p> <p>23 A. I don't recall.</p> <p>24 Q. Do you know what the speed limit was during</p>
<p>1 A. Correct.</p> <p>2 Q. Could be a danger to any pedestrians or</p> <p>3 children or anything like that that are out there;</p> <p>4 right?</p> <p>5 A. Correct.</p> <p>6 Q. "Whenever he would make these blind turns he</p> <p>7 would cross into the opposite lane of traffic. If</p> <p>8 there were any vehicles on the other side of the turn,</p> <p>9 he would have struck them." Is that a concern you had</p> <p>10 during this chase that Mr. Means's motorcycle might</p> <p>11 strike another vehicle?</p> <p>12 A. It's always a possibility.</p> <p>13 Q. I'm not asking about possibilities. You wrote</p> <p>14 in your report here as a definitive statement. "If</p> <p>15 there were any vehicles on the other side of the turn,</p> <p>16 he would have struck them." Was that your belief on</p> <p>17 May 2nd, 2020?</p> <p>18 A. Yes, that was a concern.</p> <p>19 Q. Okay. Let's go on through there. On</p> <p>20 Dartmouth Ashford Road, County Highway 10, right past</p> <p>21 the Kanawha Boone County line near Gripple Lane, the</p> <p>22 driver of the motorcycle went over the railroad tracks</p> <p>23 and didn't make the left turn. He wrecked and went in</p> <p>24 standing water to the left side of the tracks. I</p>	Page 70	<p>1 this chase?</p> <p>2 A. Not at that specific part, just the</p> <p>3 straightaway before this turn.</p> <p>4 Q. You say he was doing 60. Do you know what the</p> <p>5 speed limit was on that straightaway?</p> <p>6 A. No.</p> <p>7 Q. Do you have an estimation that it was -- well,</p> <p>8 strike that. Do you believe 60 was too fast for that</p> <p>9 road?</p> <p>10 A. Yeah.</p> <p>11 Q. Okay. Are you aware that the speed limits</p> <p>12 there during this pursuit ranged from 25 to 30 miles an</p> <p>13 hour on that road?</p> <p>14 A. I don't recall.</p> <p>15 Q. Well, let me ask you this: Why did you</p> <p>16 mention speed being a factor if you don't know how fast</p> <p>17 the appropriate speed for the road is?</p> <p>18 A. Because he got up to about 60 miles an hour,</p> <p>19 just based on my speedometer while we were chasing him,</p> <p>20 and then he took that turn, a tight turn, going close</p> <p>21 to that.</p> <p>22 Q. So while you're chasing him in the second car</p> <p>23 back, your speedometer is showing 60 miles an hour?</p> <p>24 A. At least approaching it, yeah, 55, 60.</p>

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<p style="text-align: right;">Page 73</p> <p>1 Q. Okay. How long were you and is it Corporal or 2 Sergeant Peterson?</p> <p>3 A. Corporal.</p> <p>4 Q. How long were you and Corporal Peterson 5 pursuing him at speeds in excess of 50 miles an hour?</p> <p>6 A. Just that portion. Just that straightaway 7 portion at the end.</p> <p>8 Q. Okay. Did you and Corporal Peterson discuss 9 ending the pursuit at any point?</p> <p>10 A. No.</p> <p>11 Q. So back to the actual crash. You didn't 12 witness the motorcycle lose control at the railroad 13 tracks, did you?</p> <p>14 A. No.</p> <p>15 Q. You also didn't witness Corporal Peterson 16 strike the motorcycle with his vehicle, did you?</p> <p>17 A. Correct, he did not.</p> <p>18 Q. I'm not asking whether he did or didn't. I'm 19 asking whether you witnessed it?</p> <p>20 A. It would not be possible.</p> <p>21 Q. Okay. Let me ask you again: Did you witness 22 Corporal Peterson strike Billy Means's motorcycle?</p> <p>23 A. No.</p> <p>24 Q. Okay. But you didn't see what caused the</p>	<p style="text-align: right;">Page 75</p> <p>1 understanding the initial encounter where Corporal 2 Peterson saw Billy Means's motorcycle was around 3 Walmart at 119?</p> <p>4 A. Yeah.</p> <p>5 Q. Okay.</p> <p>6 MR. RUGGIER: I'm sorry, you said at 1:19 7 or on 119?</p> <p>8 MR. FORBES: Let's ask it both ways.</p> <p>9 MR. RUGGIER: What I'm asking, because 10 the road is 119.</p> <p>11 MR. FORBES: Right.</p> <p>12 MR. RUGGIER: And the time is --</p> <p>13 MR. FORBES: Oh, I'm referring to the 14 road.</p> <p>15 Q. You were referring to --</p> <p>16 A. US 119.</p> <p>17 Q. All right. Okay. The time was around 8:00 18 o'clock in the morning; right?</p> <p>19 A. Best I can remember, yeah.</p> <p>20 Q. Okay. What's your understanding of why 21 Corporal Peterson began to follow Billy Means's 22 vehicle?</p> <p>23 A. I know that the tags were improper and then 24 other than that I don't know, we haven't talked about</p>
<p style="text-align: right;">Page 74</p> <p>1 actual crash of the motorcycle?</p> <p>2 A. No, but I was close with Corporal Peterson and 3 he was away from Mr. Means. He was closer to me and 4 he's up there, so it wouldn't be possible for him to 5 have struck him.</p> <p>6 Q. How far from Corporal Peterson's vehicle were 7 you at the time that you guys approached these railroad 8 tracks where Mr. Means's motorcycle crashed?</p> <p>9 A. If I -- I don't recall specifically, but I'd 10 estimate about 20 yards, 15 yards.</p> <p>11 Q. At 55, 60 miles an hour?</p> <p>12 A. When we were slowing. We're slowing because 13 we're coming up for this turn, but prior to that, 14 whenever we were going those speeds on the straight, 15 I'd say 30, 35 yards, but I don't recall specifically.</p> <p>16 Q. Okay. I want to play something for you. And 17 we're going to make this Exhibit 4. I've got it 18 available electronically that we'll get to the court 19 reporter. It's the pursuit audio.</p> <p>20 (Whereupon an excerpt from Exhibit 4, Pursuit 21 Audio, was played after which the deposition continued 22 as follows:)</p> <p>23 Q. Let's pause that for a second there at 1 24 minute, 21 seconds. Let me ask you this: Is that your</p>	<p style="text-align: right;">Page 76</p> <p>1 it.</p> <p>2 Q. Okay. You didn't talk about it after the 3 incident on May 2nd when you had to write your report 4 as to why he was following this guy?</p> <p>5 A. No.</p> <p>6 Q. So let me ask you this: When you're engaged 7 in this pursuit that went on for, what, almost 20 8 minutes?</p> <p>9 A. It sounds right. I'm not sure completely, but 10 yeah.</p> <p>11 Q. Did you know why you were following this 12 vehicle?</p> <p>13 A. I was assisting in a pursuit.</p> <p>14 Q. Okay. Did you know why Corporal Peterson was 15 following this vehicle?</p> <p>16 A. No.</p> <p>17 Q. Did you know whether he suspected a traffic 18 offense?</p> <p>19 A. He said that the tags were improper and then 20 said that he was looking back at him, so.</p> <p>21 Q. Other than the tags being improper and him 22 looking back at him, are you aware of any other 23 suspected offenses that this pursuit was engaged 24 following Billy Means for?</p>

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<p>1 A. I'm not aware of any. I was just there to 2 assist.</p> <p>3 Q. Do you believe as a South Charleston police 4 officer that you have a duty to factor in the type of 5 offense when you conduct a pursuit even if you're the 6 second vehicle?</p> <p>7 A. Yes.</p> <p>8 Q. How do you do that if you don't know what he's 9 being pursued for?</p> <p>10 A. He said that the tags were improper and then 11 he was looking back at him.</p> <p>12 Q. So in your determination of why to follow this 13 vehicle and why not to stop this pursuit, the only 14 offense that you're aware of for Billy Means is the 15 improper tag; right?</p> <p>16 A. The improper tag accompanied with somebody 17 that continually looks back to you would make me 18 believe that it could be a stolen vehicle.</p> <p>19 Q. Okay. Let me ask you this: Is it a crime to 20 look back at somebody off of a motorcycle?</p> <p>21 A. No, but the improper tags and then not 22 stopping for police is.</p> <p>23 Q. Improper tags is the only thing --</p> <p>24 MR. RUGGIER: Sorry, guys.</p>	Page 77	<p>1 started fleeing.</p> <p>2 Q. Fleeing at 2:50</p> <p>3 A. I think.</p> <p>4 Q. That's what you believe based on what you've 5 heard here?</p> <p>6 A. Uh-huh.</p> <p>7 (Whereupon an excerpt from Exhibit 4, Pursuit 8 Audio, was played after which the deposition continued 9 as follows:)</p> <p>10 Q. Do you know what the speed limit is out 11 through there on Trace Fork?</p> <p>12 A. No.</p> <p>13 Q. It's not 50 miles per hour, is it?</p> <p>14 A. I don't know.</p> <p>15 (Whereupon an excerpt from Exhibit 4, Pursuit 16 Audio, was played after which the deposition continued 17 as follows:)</p> <p>18 Q. That's at about 4:40 on the recording. Can 19 you tell who that is that's telling him if he goes 20 reckless just let him go?</p> <p>21 A. Paskal.</p> <p>22 Q. Who's Paskal?</p> <p>23 A. Ben Paskal, the lieutenant.</p> <p>24 Q. Okay, so that would be the supervising</p>	Page 79
<p>1 Q. Improper tags is the only thing at the 2 beginning of this encounter that you're aware of being 3 a reason to stop a vehicle; right?</p> <p>4 A. Correct. Just what you heard on the radio 5 traffic is the only thing I was aware of.</p> <p>6 Q. All right. Let's keep listening.</p> <p>7 (Whereupon an excerpt from Exhibit 4, Pursuit 8 Audio, was played after which the deposition continued 9 as follows:)</p> <p>10 Q. Okay, so that's Officer Peterson asking Metro 11 to notify Lincoln County that potentially this person 12 could flee and that they should have somebody ready 13 over in that area; right?</p> <p>14 A. Yes.</p> <p>15 (Whereupon an excerpt from Exhibit 4, Pursuit 16 Audio, was played after which the deposition continued 17 as follows:)</p> <p>18 Q. All right, so that's at about 2 minutes and 50 19 seconds of the audio recording and at that point 20 Corporal Peterson is radioing that he believes 21 Mr. Means is going to flee.</p> <p>22 A. At that point?</p> <p>23 Q. Yeah.</p> <p>24 A. From what I understand I think he was already</p>	Page 78	<p>1 officer; right?</p> <p>2 A. Correct.</p> <p>3 Q. So at 4:40 on this audio recording, Lieutenant 4 Paskal is telling Corporal Peterson if he goes reckless 5 just let him go; right?</p> <p>6 A. Yeah.</p> <p>7 Q. Okay. Did you hear that during the audio? 8 Were you listening to all this?</p> <p>9 A. I don't recall, but I'm sure I would have 10 heard it.</p> <p>11 Q. Okay. How do you define reckless?</p> <p>12 A. Reckless would be like if there's cars passing 13 like swerving towards him, passing cars on a double 14 line, things like that.</p> <p>15 Q. Let me ask you this: Have you ever charged 16 anybody with reckless driving?</p> <p>17 A. Maybe.</p> <p>18 Q. Okay. You're aware reckless driving is a 19 crime; right?</p> <p>20 A. Yeah.</p> <p>21 Q. Okay. Is there any legal requirement that 22 you've got to be passing a vehicle to be recklessly 23 operating one?</p> <p>24 A. No. The code for reckless driving just says</p>	Page 80

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<p style="text-align: right;">Page 81</p> <p>1 driving without due regard.</p> <p>2 Q. Back to your report and Exhibit 3, you</p> <p>3 yourself wrote "He was also going at a high rate of</p> <p>4 speed around blind curves. Whenever he would make</p> <p>5 these blind turns, he would cross in the opposite lane</p> <p>6 of traffic. If there were any vehicles on the other</p> <p>7 side of the road -- other side of the turn, he would</p> <p>8 have struck them." Do you think somebody operating a</p> <p>9 vehicle like that has a regard for safety?</p> <p>10 A. Not necessarily, no.</p> <p>11 (Whereupon an excerpt from Exhibit 4, Pursuit</p> <p>12 Audio, was played after which the deposition continued</p> <p>13 as follows:)</p> <p>14 Q. Now, at that point you've got Corporal</p> <p>15 Peterson saying we're not speeding, I'm right with him.</p> <p>16 Then he says 47 miles an hour. Do you know what the</p> <p>17 speed limit was through there?</p> <p>18 A. No.</p> <p>19 Q. Do you believe, based on what Lieutenant</p> <p>20 Paskal was saying, that he, Lieutenant Paskal, was</p> <p>21 telling Corporal Peterson to disengage a pursuit if</p> <p>22 someone starts driving in a manner that's dangerous to</p> <p>23 people?</p> <p>24 A. Yeah, recklessly.</p>	<p style="text-align: right;">Page 83</p> <p>1 A. Yes.</p> <p>2 (Whereupon an excerpt from Exhibit 4, Pursuit</p> <p>3 Audio, was played after which the deposition continued</p> <p>4 as follows:)</p> <p>5 Q. We're a little over 10 minutes into this.</p> <p>6 This is you talking now; right?</p> <p>7 A. Yeah.</p> <p>8 Q. Okay, so you've taken over the radio chatter</p> <p>9 with Metro?</p> <p>10 A. Yes.</p> <p>11 Q. Are you communicating with Peterson separately</p> <p>12 at this point?</p> <p>13 A. No.</p> <p>14 Q. Okay, so the only way for you and Peterson to</p> <p>15 communicate is also through this radio that Metro is</p> <p>16 listening to?</p> <p>17 A. Yes.</p> <p>18 Q. Is that right? Okay. I guess what I'm asking</p> <p>19 is you guys aren't switching channels somehow or any of</p> <p>20 that kind of, you know, where you can talk, just the</p> <p>21 two of you?</p> <p>22 A. Correct. Just what you hear.</p> <p>23 Q. Just what I hear. Okay. All right. Let's</p> <p>24 keep going.</p>
<p style="text-align: right;">Page 82</p> <p>1 (Whereupon an excerpt from Exhibit 4, Pursuit</p> <p>2 Audio, was played after which the deposition continued</p> <p>3 as follows:)</p> <p>4 Q. Let me ask you a question. We're 5 minutes</p> <p>5 and 47 seconds into this. If you engage in a pursuit</p> <p>6 of somebody, are you suppose to have your sirens and</p> <p>7 lights running?</p> <p>8 A. At first I would do my lights and sirens to</p> <p>9 let them know I was behind them and then after you</p> <p>10 could just go with just your lights.</p> <p>11 Q. Okay. At any point up to now in this radio, 5</p> <p>12 minutes and 47 seconds, have you heard sirens on the</p> <p>13 recording?</p> <p>14 A. No.</p> <p>15 (Whereupon an excerpt from Exhibit 4, Pursuit</p> <p>16 Audio, was played after which the deposition continued</p> <p>17 as follows:)</p> <p>18 Q. What's he talking about there, take down unit?</p> <p>19 Is that what he said?</p> <p>20 A. I think I said tell those other units.</p> <p>21 Q. Tell those other units?</p> <p>22 A. I think, yeah.</p> <p>23 Q. I couldn't make it out. When they're</p> <p>24 referring to 45, that would be your car; right?</p>	<p style="text-align: right;">Page 84</p> <p>1 (Whereupon an excerpt from Exhibit 4, Pursuit</p> <p>2 Audio, was played after which the deposition continued</p> <p>3 as follows:)</p> <p>4 Q. Did you see that yourself where the parts were</p> <p>5 falling off the motorcycle that Peterson is describing?</p> <p>6 A. No.</p> <p>7 Q. Did you see any parts in the roadway?</p> <p>8 A. No, not that I recall.</p> <p>9 (Whereupon an excerpt from Exhibit 4, Pursuit</p> <p>10 Audio, was played after which the deposition continued</p> <p>11 as follows:)</p> <p>12 Q. At 11:30, was that you or Peterson asking for</p> <p>13 units to be stationed by Metro where the road comes</p> <p>14 out?</p> <p>15 A. Just now?</p> <p>16 Q. Yeah.</p> <p>17 A. That was Peterson.</p> <p>18 Q. That was Peterson. Okay, so at 11 minutes and</p> <p>19 30 seconds into this Peterson is asking Metro again, I</p> <p>20 think he said it earlier, but he's asking Metro again</p> <p>21 to make sure they've got units at the end of wherever</p> <p>22 this road comes out?</p> <p>23 A. Yeah.</p> <p>24 Q. That would be because if he got, he being</p>

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1 Mr. Means, either got away in the pursuit or the  
2 pursuit was terminated, there would be other officers  
3 to try to locate him; right?

4 A. Yes.

5 (Whereupon an excerpt from Exhibit 4, Pursuit  
6 Audio, was played after which the deposition continued  
7 as follows:)

8 Q. All right, so we're at 11:45 and Metro is  
9 advising both you and Peterson that Boone's been  
10 notified and if you keep going on this road that you're  
11 going to end up in Boone County; right?

12 A. Correct.

13 Q. And when they say Boone's been notified, they  
14 mean Boone law enforcement officers; right?

15 A. Yes.

16 (Whereupon an excerpt from Exhibit 4, Pursuit  
17 Audio, was played after which the deposition continued  
18 as follows:)

19 Q. That's at about 13, 14, 13 minutes 14 seconds  
20 or so on the recording. That's Metro advising you and  
21 Peterson that Boone had a trooper and a deputy waiting  
22 on the Boone County line on this road; right?

23 A. Yeah.

24 Q. Okay. So if the wreck hadn't happened,

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1 Q. That's 13 minutes and 34 seconds. Is that you  
2 describing crossing some railroad tracks on Emmons?

3 A. Yes.

4 (Whereupon an excerpt from Exhibit 4, Pursuit  
5 Audio, was played after which the deposition continued  
6 as follows:)

7 Q. That was 14 minutes and I think about 12  
8 seconds and Metro was advising that they were starting  
9 to lose you. Were they losing radio contact?

10 A. Whoever just talked, they didn't hear, but I  
11 don't know who it was. I don't know if it was me or  
12 somebody else.

13 Q. Okay. Were there issues on your end hearing  
14 what Metro was saying? Was it breaking up at some  
15 points?

16 A. Not that I recall.

17 Q. Okay.

18 (Whereupon an excerpt from Exhibit 4, Pursuit  
19 Audio, was played after which the deposition continued  
20 as follows:)

21 Q. All right. That's about 14 minutes and 50  
22 seconds and someone's saying he crashed at, I think  
23 they said at the railroad?

24 A. Uh-huh.

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1 Mr. Means would have continued and would have then been  
2 pursued or come into contact with a State Trooper, a  
3 West Virginia State Trooper and a Boone County  
4 sheriff's deputy on out the road; right?

5 MR. RUGGIER: Object to the form of the  
6 question. Calls for speculate. You can answer if you  
7 can.

8 A. I can speculate they were set up there.

9 Q. It's what you were advised by Metro  
10 Communications; right?

11 A. Yeah, that they were around there.

12 Q. And that's done, again, so if a pursuit is  
13 terminated or you lose the suspect during a pursuit  
14 there's other officers that can then apprehend the  
15 suspect; right?

16 A. Yeah and also they know, excuse me, they know  
17 the area so they can help you know where you're at like  
18 as far as the pursuit goes.

19 Q. They'd know the roads a lot better than you  
20 all would; right?

21 A. Yeah.

22 (Whereupon an excerpt from Exhibit 4, Pursuit  
23 Audio, was played after which the deposition continued  
24 as follows:)

1 Q. Is that you?

2 A. Peterson.

3 Q. That was Peterson talking? Okay.

4 (Whereupon an excerpt from Exhibit 4, Pursuit  
5 Audio, was played after which the deposition continued  
6 as follows:)

7 Q. So let me ask you, at this point we're about  
8 15 minutes into this pursuit and you guys have crossed  
9 into Boone County from Kanawha County; right?

10 A. Yes.

11 Q. Okay. Where in there, in what we just  
12 listened to, the 15 minutes of it, was he described as  
13 going 60 miles an hour?

14 A. At the very end there's a straightaway before  
15 that railroad crossing.

16 Q. You don't report that to Metro though, do you,  
17 that he went 60?

18 A. No.

19 Q. Is there a reason you didn't tell Metro how  
20 fast he was going?

21 A. Didn't have a chance. We went that speed and  
22 then you heard the next thing which was where he  
23 wrecked.

24 Q. So there's descriptions throughout that though

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<p>1 that he's going 40 some miles an hour; right?</p> <p>2 A. Correct.</p> <p>3 Q. This is a very lengthy pursuit through what's</p> <p>4 barely a two lane road and some places it's a one lane</p> <p>5 road, isn't it?</p> <p>6 A. I believe so. Like maybe some slippage on the</p> <p>7 road, but I don't recall specifically, but I think so.</p> <p>8 Q. The blind curves that you described in your</p> <p>9 report, they're not just at the end; right? I mean,</p> <p>10 those things are all the way through this.</p> <p>11 A. Correct.</p> <p>12 Q. At any point did you radio Metro or Peterson</p> <p>13 and say, hey, we should stop this pursuit?</p> <p>14 A. No.</p> <p>15 Q. Did you hear Lieutenant Paskal in the</p> <p>16 beginning say that if it became reckless to let him go?</p> <p>17 A. I don't recall, but probably.</p> <p>18 Q. Have you been told that by South Charleston</p> <p>19 before?</p> <p>20 A. If a pursuit gets too reckless to discontinue</p> <p>21 it?</p> <p>22 Q. Yes.</p> <p>23 A. Yes.</p> <p>24 Q. And how do you describe too reckless?</p>	Page 89	<p>1 VIDEO OPERATOR: Is this the video that's</p> <p>2 half an hour long?</p> <p>3 MR. FORBES: Yeah, I'm not going to play</p> <p>4 the whole 30 minutes.</p> <p>5 VIDEO OPERATOR: I've got about 15</p> <p>6 minutes left on my disk.</p> <p>7 MR. FORBES: That's fine. Just flag me,</p> <p>8 we'll take a break about five or ten minutes, okay?</p> <p>9 We're not going to play the whole thing right now.</p> <p>10 (Whereupon an excerpt of Exhibit 5,</p> <p>11 Pursuit Video Part 1, was played after which the</p> <p>12 deposition continued as follows:)</p> <p>13 Q. Can you tell who that was that just popped</p> <p>14 upped on this video, this Go Pro video?</p> <p>15 A. It looked like Corporal Peterson.</p> <p>16 Q. Let me ask you, have you ever seen this video</p> <p>17 before?</p> <p>18 A. No.</p> <p>19 Q. Okay. Where are they right now in the car?</p> <p>20 This is the very beginning of the video.</p> <p>21 A. This is South Ridge Boulevard passing like</p> <p>22 Buffalo Wild Wings and turning into Walmart parking lot</p> <p>23 or Sam's right now.</p> <p>24 Q. Okay. Do you know who's riding with Corporal</p>	Page 91
<p>1 A. Again, just the totality of circumstances, the</p> <p>2 speed, how they're driving, other vehicles on the road,</p> <p>3 pedestrians, are you going through a residential area</p> <p>4 or, you know, interstate. It all depends on all those</p> <p>5 things put together.</p> <p>6 Q. This was a compact residential area pretty</p> <p>7 much your entire pursuit, wasn't it?</p> <p>8 A. A residential area?</p> <p>9 Q. Yeah.</p> <p>10 A. No.</p> <p>11 Q. You didn't see residences?</p> <p>12 A. Whenever I consider residential area, I mean,</p> <p>13 somewhere where there's, the speed limit is about 50,</p> <p>14 there's houses all along and there's cross streets</p> <p>15 everywhere.</p> <p>16 Q. The speed limit would be what?</p> <p>17 A. About 15. This was a county highway road.</p> <p>18 Q. Okay. Let me show you -- let's go to another</p> <p>19 exhibit. We'll make this Exhibit 5. We'll provide</p> <p>20 this electronically to the court reporter.</p> <p>21 This is -- I'm going to have to try to get</p> <p>22 technically savvy here so give me a second. All right.</p> <p>23 This is a pursuit video taken by South Charleston</p> <p>24 provided to us. I'm going to come around.</p>	Page 90	<p>1 Peterson? If that's him, it looked like he was in the</p> <p>2 passenger seat.</p> <p>3 A. I don't know.</p> <p>4 Q. Wasn't you?</p> <p>5 A. No.</p> <p>6 Q. Tell you what I'm going to do, I'm going to go</p> <p>7 ahead and skip forward a little bit. I think some of</p> <p>8 this may be more directed at Corporal Peterson. So</p> <p>9 we're at about a minute 25 right now. Let's skip on</p> <p>10 out here. It may take a second with the Wi-Fi. All</p> <p>11 right.</p> <p>12 (Whereupon an excerpt of Exhibit 5,</p> <p>13 Pursuit Video Part 1, was played after which the</p> <p>14 deposition continued as follows:)</p> <p>15 Q. We're 7 minutes and 48 seconds into the video.</p> <p>16 Do you recognize that road?</p> <p>17 A. No.</p> <p>18 Q. Would that part have been before you joined</p> <p>19 the chase?</p> <p>20 A. I think so. Yeah, looks like it.</p> <p>21 Q. You tell me when you recognize the spot where</p> <p>22 you come into this chase at, okay?</p> <p>23 A. Okay.</p> <p>24 (Whereupon an excerpt of Exhibit 5,</p>	Page 92

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<p>1 Pursuit Video Part 1, was played after which the 2 deposition continued as follows:)</p> <p>3 Q. We're about 9 and a half minutes in right now, 4 into this video. Those are houses that they're passing 5 at this point; right?</p> <p>6 A. Yeah.</p> <p>7 Q. Cars on both sides of the road; is that right?</p> <p>8 A. What is it now?</p> <p>9 Q. I said there were houses and cars on both 10 sides of the road.</p> <p>11 A. Yeah.</p> <p>12 (Whereupon an excerpt of Exhibit 5, 13 Pursuit Video Part 1, was played after which the 14 deposition continued as follows:)</p> <p>15 Q. We're at 10 minutes and 37 seconds. Does that 16 look like more than a one lane road to you?</p> <p>17 A. No. Maybe one and a half.</p> <p>18 Q. That's a stop sign at 10 minutes and 58 19 seconds. Now you're still not at the part -- we're not 20 at a part in this video where we can see where you came 21 into this chase yet.</p> <p>22 A. Correct.</p> <p>23 (Whereupon an excerpt of Exhibit 5, 24 Pursuit Video Part 1, was played after which the</p>	Page 93	Page 95
<p>1 deposition continued as follows:)</p> <p>2 Q. Okay. This is 12 minutes into this and 3 they're going down, at least on this video, down some 4 kind of gravel road?</p> <p>5 A. Yeah, looks like it.</p> <p>6 Q. Okay.</p> <p>7 A. That's it right there.</p> <p>8 Q. Okay, so let me back that up a couple seconds. 9 Okay, so you entered the pursuit about there; is that 10 right?</p> <p>11 A. Yeah.</p> <p>12 Q. That's at 15 minutes basically, about 14.58 or 13 so on this video is where they said you started and you 14 entered. Does that sound about right to you, at that 15 intersection there?</p> <p>16 A. Yeah.</p> <p>17 Q. I say intersection, it's basically one little 18 road coming into another little road; right?</p> <p>19 A. Yeah.</p> <p>20 Q. Okay.</p> <p>21 MR. FORBES: Do you need to change tapes? 22 Let's take just a very quick break.</p> <p>23 VIDEO OPERATOR: Time is 11:27 a.m. 24 We're off the record.</p>	Page 94	Page 96

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<p>1 <b>on the school zone sign?</b></p> <p>2 A. There could be. I don't know if there is or 3 isn't, but it was on the weekend and with the pandemic 4 they also weren't having in house school.</p> <p>5 <b>Q. I understand there may not have been school</b> 6 <b>going on actively at 8:00 something in the morning that</b> 7 <b>day. What I'm asking you is you pursued this through</b> 8 <b>an area that had a school in it; right?</b></p> <p>9 A. Possibly. I don't know if there's a school 10 there or not.</p> <p>11 <b>Q. Maybe just a sign for a school?</b></p> <p>12 A. Yeah, sometimes they'll put them where the 13 school bus picks kids up.</p> <p>14 (Whereupon an excerpt of Exhibit 5, 15 Pursuit Video Part 1, was played after which the 16 deposition continued as follows:)</p> <p>17 <b>Q. What's that look like to you right there?</b></p> <p>18 A. Looks like a school.</p> <p>19 <b>Q. Yeah, you all drove right past that; right?</b></p> <p>20 A. Okay. Yeah. I don't know that area. That's 21 the first and last time I been out there.</p> <p>22 <b>Q. Okay. It switches over to Part 2 and I'm not</b> 23 <b>going to make you watch all of Part 2, but we'll watch</b> 24 <b>a little bit of it.</b></p>	<p>Page 97</p> <p>1 going much over it, but I don't recall specifics.</p> <p>2 <b>Q. Okay, but you do recall that you wouldn't have</b> 3 <b>been going under 25?</b></p> <p>4 A. I don't think we were.</p> <p>5 (Whereupon an excerpt of Exhibit 6, 6 Pursuit Video Part 2, was played after which the 7 deposition continued as follows:)</p> <p>8 <b>Q. We're at 3 minutes and 20 seconds. Does that</b> 9 <b>look like a residence there on the left to you?</b></p> <p>10 A. Yeah.</p> <p>11 <b>Q. Around that kind of curve.</b></p> <p>12 (Whereupon an excerpt of Exhibit 6, 13 Pursuit Video Part 2, was played after which the 14 deposition continued as follows:)</p> <p>15 <b>Q. This definitely here, 3 minutes, 35 seconds</b> 16 <b>doesn't look like a full two lane road, does it? I</b> 17 <b>mean, what would you describe that as?</b></p> <p>18 A. Maybe just like a one and a half. Like you 19 could probably get two, but somebody would have to be 20 slowed.</p> <p>21 <b>Q. Pretty tight; right?</b></p> <p>22 A. Yeah.</p> <p>23 (Whereupon an excerpt of Exhibit 6, 24 Pursuit Video Part 2, was played after which the</p>
<p>1 A. Okay.</p> <p>2 MR. RUGGIER: Does this need to be a new 3 exhibit or is it going to be --</p> <p>4 MR. FORBES: Yeah, I guess let's go ahead 5 and make it, just because it will be easier since it's 6 going to come in two parts, let's go ahead and make 7 this Exhibit --</p> <p>8 THE DEPONENT: Six.</p> <p>9 MR. FORBES: -- 6. It's called Pursuit 10 Path 2.</p> <p>11 (Whereupon an excerpt of Exhibit 6, 12 Pursuit Video Part 2, was played after which the 13 deposition continued as follows:)</p> <p>14 <b>Q. I'm going to skip a ahead a little bit just to</b> 15 <b>save us some time, okay?</b></p> <p>16 A. Okay.</p> <p>17 <b>Q. Maybe. Now, we're at 2 minutes and 32</b> 18 <b>seconds. What's that speed limit sign say right there?</b></p> <p>19 A. Twenty-five.</p> <p>20 <b>Q. Okay and that's at 2 minutes and 32 seconds</b> 21 <b>into this Part 2 of the pursuit path. You all were</b> 22 <b>definitely not going under 25 miles an hour at this</b> 23 <b>point; right?</b></p> <p>24 A. Not that I recall. We might not have been</p>	<p>Page 98</p> <p>1 deposition continued as follows:)</p> <p>2 <b>Q. Seems like whoever is taking the video is</b> 3 <b>going a pretty good rate, aren't they?</b></p> <p>4 A. I don't know.</p> <p>5 <b>Q. All right. We're at 5 minutes, 41 seconds</b> 6 <b>into this. That's another speed limit sign. What is</b> 7 <b>it?</b></p> <p>8 A. Twenty-five.</p> <p>9 <b>Q. Miles per hour?</b></p> <p>10 A. Correct.</p> <p>11 (Whereupon an excerpt of Exhibit 6, 12 Pursuit Video Part 2, was played after which the 13 deposition continued as follows:)</p> <p>14 <b>Q. Was that like a rock wall we just passed</b> 15 <b>there, about 7 minutes, on the left?</b></p> <p>16 A. Looked like it.</p> <p>17 <b>Q. Yeah. Here's one railroad crossing. This is</b> 18 <b>at 7 minutes about 40 seconds. You notice how they</b> 19 <b>stop?</b></p> <p>20 A. Uh-huh.</p> <p>21 <b>Q. What did they stop for?</b></p> <p>22 A. I don't know, maybe looking for trains, I'm 23 not sure.</p> <p>24 (Whereupon an excerpt of Exhibit 6,</p>

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<p style="text-align: right;">Page 101</p> <p>1 Pursuit Video Part 2, was played after which the 2 deposition continued as follows:)</p> <p>3 Q. 9:05 we've got another railroad crossing. 4 They stopped again. Did you see that?</p> <p>5 A. Yes.</p> <p>6 Q. We got residences again. I mean, I haven't 7 described them all the way through here, but you see 8 periodically residences on this road; right, where 9 people live?</p> <p>10 A. Yes.</p> <p>11 (Whereupon an excerpt of Exhibit 6, 12 Pursuit Video Part 2, was played after which the 13 deposition continued as follows:)</p> <p>14 Q. Can you tell what this is over here with 15 picnic tables? We're at 9 minutes and 23 seconds into 16 this. We've got a little pull off and it looks like a 17 basketball court, picnic tables, I guess a kids' swing 18 set, play set, do you see that?</p> <p>19 A. Yeah.</p> <p>20 Q. Do you know what that is?</p> <p>21 A. Looks like a park.</p> <p>22 Q. So the pursuit at 8:00 something in the 23 morning proceeded past this park?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 103</p> <p>1 Pursuit Video Part 2, was played after which the 2 deposition continued as follows:)</p> <p>3 Q. At 9:45, that was a cemetery off to the left; 4 right, 9 minutes and 45 seconds? I'll back it up for 5 you a little bit.</p> <p>6 A. Yeah, it looked like it. Yeah, it appears so.</p> <p>7 Q. And while we're looking for the straight 8 stretch, in your report, Officer, where you're talking 9 about him going at a high rate of speed around blind 10 curves and he'd make these blind turns and cross into 11 the opposite lane of traffic, is that a specific place 12 in here or is that just throughout?</p> <p>13 A. I would just say throughout.</p> <p>14 Q. So basically the whole time you're dealing 15 with him, from the mark where we saw you come onto this 16 pursuit through to the end with the crash, he's going 17 around all these curvy blind curves unsafely?</p> <p>18 A. I wouldn't say all of them, but he was going 19 around a lot of them at a high rate of speed.</p> <p>20 Q. Throughout the pursuit?</p> <p>21 A. Yeah.</p> <p>22 Q. It's not like it just was a couple curves and 23 it stopped. It was pretty much the whole way through?</p> <p>24 A. Yeah.</p>
<p style="text-align: right;">Page 102</p> <p>1 Q. And of course beside the park you've got 2 residences off to the right and then you've got the 3 park with the kids' swing set and stuff off to the left; 4 right?</p> <p>5 A. Correct.</p> <p>6 (Whereupon an excerpt of Exhibit 6, 7 Pursuit Video Part 2, was played after which the 8 deposition continued as follows:)</p> <p>9 Q. All right. We're at 9 minutes and 36 seconds. 10 What's that white thing there?</p> <p>11 A. Speed limit sign for 25 miles per hour.</p> <p>12 Q. You all passed that; right?</p> <p>13 A. Correct.</p> <p>14 Q. Do you know where the straight stretch you 15 were talking about where you saw Mr. Means's motorcycle 16 going 60 miles an hour was?</p> <p>17 A. I should be able to let you know. It's just 18 the straight stretch right before the tracks.</p> <p>19 Q. Just let me know, okay?</p> <p>20 A. I will.</p> <p>21 Q. This is all pretty curvy with a lot of 22 residences, but you tell me when you see that.</p> <p>23 A. Okay.</p> <p>24 (Whereupon an excerpt of Exhibit 6,</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. Okay and those were done where you believed 2 that he was crossing into the opposite lane of traffic 3 and you believed that if there were any vehicles on the 4 other side he would have struck those vehicles; 5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. Nevertheless this pursuit continued?</p> <p>8 A. Correct.</p> <p>9 (Whereupon an excerpt of Exhibit 6, 10 Pursuit Video Part 2, was played after which the 11 deposition continued as follows:)</p> <p>12 Q. What's this at 10 minutes and 51 seconds? 13 What is this almost on the road here? What is that 14 building?</p> <p>15 A. It looks like a church.</p> <p>16 Q. Okay, so that's a church and this chase is at 17 8:00 something in the morning; right?</p> <p>18 A. Correct.</p> <p>19 Q. You all are passing on this road right beside 20 this church where we've got some kind of walkway or 21 path almost right on the road; right?</p> <p>22 A. Looks like it.</p> <p>23 Q. He didn't strike anybody at the church, did 24 he?</p>

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1 A. Not to my knowledge.		1 him.	
2 (Whereupon an excerpt of Exhibit 6,		2 Q. You didn't run into him; right?	
3 Pursuit Video Part 2, was played after which the		3 A. Correct.	
4 deposition continued as follows:)		4 Q. And you're the second car back?	
5 Q. Let me ask you. Now that was about 11:48,		5 A. Uh-huh.	
6 probably somewhere in that neighborhood. The vehicle		6 Q. If you're going 60 and he's going much less	
7 stopped to let another car pass, did you see that?		7 than you you'd have run into him; right?	
8 A. Yeah.		8 A. Correct. We keep distance between each other.	
9 Q. Was that because the road was so narrow the		9 Could be possible for a little bit of leeway. Like I	
10 safe way to do that would be to stop so the other car		10 could be coming up on him 60, but, no, for the most	
11 could pass?		11 part he'd be going close to that.	
12 A. Yeah, looks like it.		12 Q. About the same speed; right? Okay, so this is	
13 (Whereupon an excerpt of Exhibit 6,		13 right before you guys are chasing Billy Means to this	
14 Pursuit Video Part 2, was played after which the		14 railroad track, you're both going 60 in pursuit	
15 deposition continued as follows:)		15 roughly?	
16 Q. Here's another railroad track and they stopped		16 A. Roughly.	
17 again. Would you say watching them do it over and over		17 (Whereupon an excerpt of Exhibit 6,	
18 again it's likely to be safe, make sure there's no		18 Pursuit Video Part 2, was played after which the	
19 trains and stuff coming?		19 deposition continued as follows:)	
20 A. Yeah. I think it's this straight stretch.		20 Q. All right. Now, in this video at 13 minutes	
21 Q. Right here?		21 and 22 seconds, is this the little bed that had the	
22 A. I think so.		22 water in it that you found Mr. Means in?	
23 Q. Okay.		23 A. Yes.	
24 A. It appears so.		24 Q. There's no water on it on this date where this	
	Page 106		Page 108
1 Q. So you think -- around 12:59 is what I've got		1 is taken or not much not that you can see on the	
2 on here. You think it's somewhere in that neighborhood		2 camera.	
3 is where he's going 60 miles an hour you think?		3 A. Correct.	
4 A. I don't know for sure if he was going 60, but		4 Q. Okay. That's all the questions I got about	
5 I was going 60 to try and --		5 that.	
6 Q. You were going 60 to try to catch him?		6 A. Okay.	
7 A. Uh-huh.		7 Q. All right. Let's go on your report there,	
8 Q. Through this stretch here? Pretty beat up		8 Exhibit 3 I believe, the case report, on down your	
9 looking road from what I can tell.		9 summary. It says "I got out of my cruiser at the same	
10 A. Yeah.		10 time as Corporal Peterson." So is it your belief that	
11 Q. Would you agree with me the last speed limit		11 you and Corporal Peterson both exited your vehicles at	
12 sign we've seen on this video was for 25 miles an hour?		12 the same time?	
13 A. Yeah, the last one I saw, correct.		13 A. At least close, I mean, I wouldn't say exact,	
14 Q. You yourself are doing 60 in the straight		14 but approximately at the same time, yes.	
15 stretch before we get to the tracks?		15 Q. Well, because, I mean, your report you did	
16 A. Yeah or close to it, 60 or close to it.		16 say, you said "I got out of my cruiser at the same	
17 (Whereupon an excerpt of Exhibit 6,		17 time." You didn't say approximately or anything like	
18 Pursuit Video Part 2, was played after which the		18 that. You said at the same time.	
19 deposition continued as follows:)		19 A. I'd say approximately.	
20 Q. That's at 13 minutes and 10 seconds. We're		20 Q. "We began to approach and drew our service	
21 now at the crash location. So the spot where you --		21 weapon." You both had your guns out at that point?	
22 and I assume Peterson was in front of you. He would		22 A. Yes.	
23 have had to been doing 60 also.		23 Q. "Giving commands for him to show us his hands.	
24 A. I assume so, I don't know. You have to ask		24 I saw the male, later identified as William Means,	

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<p style="text-align: right;">Page 109</p> <p>1 <b>lying on his back in the water." Now at this point you</b>      2 <b>don't know who this person is; right?</b>      3 A. Correct.      4 Q. You don't know what his criminal history is?      5 A. Correct.      6 Q. You said "The water was approximately three      7 foot deep." You didn't measure the water or anything,      8 did you?      9 A. No.      10 Q. Where he had kicked up dirt, excuse me, "Where      11 he had kicked dirt up, you couldn't see under the water      12 at all." Did you see him kicking, with his legs, the      13 dirt?      14 A. Kicked up dirt is an expression just where he      15 hit the water and dirt came up. Not literally kicking.      16 Q. Okay. Then it says "Mr. Means initially      17 complied." So when you first approach him, he complies      18 and puts his hands up?      19 A. Correct.      20 Q. Okay. "Whenever we got closer to him he      21 immediately put both hands under the water where we      22 couldn't see." You don't know whether he did that      23 intentionally or whether he was having difficulty given      24 his injuries, do you?</p>	<p style="text-align: right;">Page 111</p> <p>1 <b>left hand.</b>      2 A. Correct.      3 Q. And then you say he refused to show us his      4 other hand and was pulling away. You didn't see      5 Corporal Peterson try to grab his other hand, did you?      6 A. No.      7 Q. You say "I administered a short burst of OC      8 spray." How long did you spray the spray for?      9 A. Under a second.      10 Q. Okay. How long are you trained to spray for?      11 A. Just around there. Just a short burst at      12 first to see if it gains compliance.      13 Q. One second, two seconds, three seconds, half a      14 second, what's the --      15 A. They don't give specifics on that. Just a      16 short burst.      17 Q. Is there a limit?      18 A. No.      19 Q. So you could spray for 20 seconds if you      20 wanted to?      21 A. If the totality of circumstances dictated      22 that, yes.      23 Q. What circumstances would dictate a 20 second      24 straight burst of OC spray?</p>
<p style="text-align: right;">Page 110</p> <p>1 A. What do you mean exactly?      2 Q. Well, you describe it as he initially complies      3 and puts his hands up. Then he puts his hands back      4 down in the water. We all know he had a serious spinal      5 injury at the end of this, okay?      6 I guess what I'm asking is do you know whether or      7 not the hands went back down due to a medical reason or      8 whether it was some kind of intent on his part? You      9 don't know what was going through his mind is what I'm      10 asking.      11 A. No, I don't know what was going through his      12 mind.      13 Q. Then it says "Peterson had to get in the water      14 with him and grabbed his left hand. He still refused      15 to show us his other hand and was pulling away. I      16 administered a short burst of OC spray to Mr. Means to      17 get him to comply." What compliance measures had you      18 tried prior to spraying him with pepper spray?      19 A. Verbal commands.      20 Q. You hadn't grabbed his wrist at that point,      21 had you?      22 A. No. Or, sorry, Corporal Peterson did, I      23 didn't, if that's what you're asking.      24 Q. Your report says Corporal Peterson grabbed his</p>	<p style="text-align: right;">Page 112</p> <p>1 A. You want me to speculate or?      2 Q. I want you, based on your training and      3 experience as a police officer, you just testified that      4 you could spray for 20 seconds. I want you to tell me      5 why -- what circumstances there would be --      6 A. Like if there was a weapon or something, they      7 continued to reach for it and wouldn't stop.      8 Q. What's the longest you ever sprayed OC spray      9 at anybody?      10 A. Not long, just a short burst.      11 Q. What's a short burst?      12 A. Under a second. Second or under.      13 Q. Have you ever sprayed more than a second?      14 A. No. Not to my knowledge. Approximately. I      15 wouldn't say absolutely I never went over a second, but      16 no, not to my knowledge.      17 Q. Okay. Now, when you approached Mr. Means as      18 he lay on his back in this little ravine area, he had a      19 helmet on; right?      20 A. Correct.      21 Q. A motorcycle helmet. It did not have a visor,      22 did it?      23 A. Correct.      24 Q. Okay, so when you sprayed the OC spray, did</p>

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<p style="text-align: right;">Page 113</p> <p>1 you spray that into his eyes in the helmet or where      2 exactly did you administer the OC spray?      3 A. The facial region. Just the opening in the      4 helmet.      5 Q. Okay. After you sprayed him, did you remove      6 his helmet?      7 A. No.      8 Q. Did you ever remove his helmet?      9 A. No.      10 Q. You indicated in your report here that you      11 said that the OC spray had no effect on him.      12 A. Correct.      13 Q. Did you administer a second blast?      14 A. No.      15 Q. Why not?      16 A. Corporal Peterson was able to get hold of his      17 left hand and then so at that point he kept saying he      18 was drowning, so that's point number one is to get him      19 out of the water and save his life.      20 Q. So the OC spray ultimately didn't make him      21 comply to anything?      22 A. Correct.      23 Q. When you sprayed him with the pepper spray he      24 didn't have a weapon to your knowledge, did he?</p>	<p style="text-align: right;">Page 115</p> <p>1 with any training as to how to do that safely to make      2 sure you don't further a spinal injury?      3 A. No.      4 Q. Do you know anything about how spinal cords      5 work?      6 A. Not too much, no.      7 Q. Okay. Are you aware that there's the spinal      8 column and then inside of that is a very delicate      9 spinal cord, it's like the consistency of toothpaste.      10 Did you know that?      11 A. It sounds right.      12 Q. Okay. Has anyone provided you with any      13 training, prior to this May 2nd 2020 incident, that you      14 need to be very careful in moving people who present      15 with spinal injuries?      16 A. Whenever I was a lifeguard, like the first aid      17 training.      18 Q. What did they tell you as a lifeguard?      19 A. Just if somebody has a neck injury or spine      20 injury try and, like, stabilize them.      21 Q. Okay. How do you stabilize them?      22 A. With like a backboard, like a C collar and      23 backboard. They have them at the pool.      24 Q. When you took the lifeguard training, did they</p>
<p style="text-align: right;">Page 114</p> <p>1 A. Not to my knowledge.      2 Q. He wasn't threatening you verbally saying he      3 was going to hit you or stomp you or shoot you or      4 anything like that?      5 A. No.      6 Q. Ultimately Corporal Peterson was able to just      7 simply grab both wrists and get compliance?      8 A. Not both, just the left.      9 Q. I thought you said after the OC spray didn't      10 work that Corporal Peterson was able to get the other      11 hand?      12 A. Get his left hand and I got his right, I      13 believe. It could be vice versa, but one of us had one      14 and the other one had the other.      15 Q. You were able to get his hand, regardless of      16 the OC spray used, once you reached and grabbed his      17 hand you were able to get compliance?      18 A. Yeah, I had to reach under the water and find      19 his hand and then grab it.      20 Q. You didn't try that prior to spraying him with      21 pepper spray though?      22 A. No.      23 Q. When you remove someone from the scene that's      24 been injured in a vehicle accident, are you provided</p>	<p style="text-align: right;">Page 116</p> <p>1 tell you it was okay to grab somebody by the arm and      2 drag them multiple yards if they present with a spinal      3 injury?      4 A. If you knew about a spine injury, correct.      5 Q. You knew Billy Means had been thrown from his      6 motorcycle into this ravine; right?      7 A. I knew he was involved in a wreck and went in      8 the ravine, correct.      9 Q. You don't have any knowledge of whether or not      10 he had feeling and sensation in his feet at the time      11 you pepper sprayed him, do you?      12 A. Correct.      13 Q. Correct that you don't know?      14 A. Correct, I do not know.      15 Q. For all you know he could have?      16 A. Yes.      17 Q. All right. I'm going to hand you, make this      18 one --      19 MR. FORBES: Are we on 7? That's      20 convenient because this one says 7. Do you need a use      21 of force report, Duane?      22 MR. RUGGIER: Yeah, if you hand it to him      23 -- if you have a copy I'll take it.      24 HARVEY DEPOSITION EXHIBIT NO. 7</p>

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<p>1 (Use of Force Report was 2 marked for identification purposes as 3 Harvey Deposition Exhibit No. 7.)</p> <p>4 Q. All right. Officer Harvey, do you recognize 5 that document?</p> <p>6 A. Yes.</p> <p>7 Q. What is it?</p> <p>8 A. Use of force report.</p> <p>9 Q. Whose use of force report is it?</p> <p>10 A. Mine.</p> <p>11 Q. Okay. When did you complete this?</p> <p>12 A. I would say the day, May 2nd, but I don't 13 recall specific.</p> <p>14 Q. Okay. Look over on the last page.</p> <p>15 A. Okay.</p> <p>16 Q. It's got a spot for a date that's blank and 17 then another spot for a date that says May 5th. Why do 18 you think it would have been approved on May 5th?</p> <p>19 A. They may not have looked at and read it until 20 then, I don't know.</p> <p>21 Q. Okay. All right. Why did you complete this?</p> <p>22 A. Because we administered OC spray or, sorry, 23 that I administered OC spray.</p> <p>24 Q. Okay. Is that the only thing that you put in</p>	<p>Page 117</p> <p>1 this use of force report, did you?</p> <p>2 A. Correct.</p> <p>3 Q. You didn't list anything on here indicating 4 that you used your foot on Mr. Means's head, did you?</p> <p>5 A. Correct.</p> <p>6 Q. In fact, you don't mention that anywhere in 7 your report, do you?</p> <p>8 A. No. If something didn't happen I wouldn't 9 list it.</p> <p>10 Q. Okay, so your testimony is you did not use 11 your foot to stomp on Mr. Means's head?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. All right. Let's watch the video. You 14 know what, I think I can pull this up on my phone, be 15 simpler. Just a second here.</p> <p>16 MR. RUGGIER: Do you type the video?</p> <p>17 COURT REPORTER: No.</p> <p>18 MR. RUGGIER: What about the audio, do 19 you type that?</p> <p>20 COURT REPORTER: No.</p> <p>21 MR. FORBES: We talked about that. We've 22 got the exhibit in the record. I didn't want to have 23 to make her retype everything that was in it.</p> <p>24 Q. All right. Let me come over there.</p>
<p>1 use of force report on for? I mean, there's no -- 2 there's nothing in here that indicates that you 3 impacted or used your hands or used any other parts of 4 your body in a forceful manner on Mr. Means; right?</p> <p>5 A. Correct, just OC.</p> <p>6 Q. Are you suppose to, when you fill out a use of 7 force report, list all types of control, it says 8 control, all types of control that you administered, 9 not just if you did one?</p> <p>10 A. When you say control.</p> <p>11 Q. Well, it's your form. In the front about 12 two-thirds of the way down, level or levels of control 13 and this has got an X under chemical.</p> <p>14 A. Uh-huh.</p> <p>15 Q. It also has some spots for open hand, closed 16 hand, impact or firearm.</p> <p>17 A. Yeah.</p> <p>18 Q. What would be impact, what would that be?</p> <p>19 A. Impact would be like an ASP baton.</p> <p>20 Q. What if someone used a knee or a foot?</p> <p>21 A. That would be like a closed hand.</p> <p>22 Q. You would list that as a closed hand?</p> <p>23 A. Yeah.</p> <p>24 Q. Okay. You didn't list any closed hands on</p>	<p>Page 118</p> <p>1 MR. FORBES: All right. We'll make this 2 Exhibit 8. This is the --</p> <p>3 MR. RUGGIER: You just going to e-mail it 4 to her later?</p> <p>5 MR. FORBES: Yeah. I've got a flash 6 drive for her or she said she'd rather have a Dropbox, 7 so I'll just do that.</p> <p>8 Q. All right. Let me play this for you here.</p> <p>9 (Whereupon an excerpt from Exhibit 8, bystander 10 video, was played after which the deposition continued 11 as follows:)</p> <p>12 Q. You know what, let me see if I can get it up 13 on the computer because it's not working very well that 14 way.</p> <p>15 (Whereupon an excerpt from Exhibit 8, bystander 16 video, was played after which the deposition continued 17 as follows:)</p> <p>18 Q. Now, beginning of this video we're about eight 19 seconds in here. Are you one of those people?</p> <p>20 A. Yeah.</p> <p>21 Q. I don't think that part is going to matter 22 much. Let me go back to the beginning.</p> <p>23 A. Okay.</p> <p>24 (Whereupon an excerpt from Exhibit 8, bystander</p>

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<p>1 video, was played after which the deposition continued 2 as follows:)</p> <p>3 <b>Q. Who just fell down there at seven seconds?</b></p> <p>4 A. That could be me. It's hard to tell. It 5 looks like me.</p> <p>6 <b>Q. What are you doing there?</b></p> <p>7 A. I think trying to pull him out. I can't tell.</p> <p>8 <b>Q. Okay. You don't think that's where you</b> <b>9 administered the pepper spray?</b></p> <p>10 A. I don't know.</p> <p>11 (Whereupon an excerpt from Exhibit 8, bystander 12 video, was played after which the deposition continued 13 as follows:)</p> <p>14 <b>Q. Now, on this video they mentioned that you're</b> <b>15 tasing him. Did you administer a taser?</b></p> <p>16 A. No.</p> <p>17 <b>Q. Did you have a taser with you?</b></p> <p>18 A. No.</p> <p>19 <b>Q. Now, someone's got what looks like their</b> <b>20 firearm drawn. Is that you or is that Peterson?</b></p> <p>21 A. It looks like me on the far right.</p> <p>22 <b>Q. I don't see Peterson anywhere on this video</b> <b>23 having a firearm out. Did he ever have his firearm</b> <b>24 out?</b></p>	<p>Page 121</p> <p>1 <b>there?</b></p> <p>2 A. I think by his arms and maybe like -- and 3 maybe the back of his jacket because he had a lot of 4 water.</p> <p>5 <b>Q. Just like pulling on his clothing kind of?</b></p> <p>6 A. Uh-huh.</p> <p>7 <b>Q. What was that with your leg there? That's</b> <b>8 you; right?</b></p> <p>9 A. Yeah, me stepping over him.</p> <p>10 <b>Q. 1 minute 31 seconds. That's you stepping over</b> <b>11 him?</b></p> <p>12 A. Correct.</p> <p>13 <b>Q. These ladies watching this on the video say</b> <b>14 they saw you stomp his head. You're saying your foot</b> <b>15 didn't come in contact with his head?</b></p> <p>16 A. Correct. They also saw that we tased him 17 which we didn't have tasers. They've been wrong 18 before.</p> <p>19 <b>Q. When the FBI called wanting a statement about</b> <b>20 this why didn't you just tell them that?</b></p> <p>21 A. Tell them what?</p> <p>22 <b>Q. That you didn't stomp on his head?</b></p> <p>23 A. I would have. I never got a chance to give 24 them a statement.</p>
<p>1 A. At the beginning, yeah.</p> <p>2 <b>Q. Is that you with your gun over top of him?</b></p> <p>3 A. Yeah.</p> <p>4 <b>Q. Okay. Now, looks to me like you all are about</b> <b>5 to drag him out of there. Is that what you're doing?</b></p> <p>6 A. Yeah, uh-huh.</p> <p>7 <b>Q. Okay.</b></p> <p>8 (Whereupon an excerpt from Exhibit 8, bystander 9 video, was played after which the deposition continued 10 as follows:)</p> <p>11 <b>Q. Had you seen this car that these women were in</b> <b>12 during the chase?</b></p> <p>13 A. Yeah.</p> <p>14 <b>Q. You did? What do you think she was talking</b> <b>15 about where she thought she was going to get hit?</b></p> <p>16 A. I guess they were speaking of Mr. Means.</p> <p>17 <b>Q. Could have been speaking of you guys; right?</b></p> <p>18 A. I wouldn't imagine so, but anything is 19 possible.</p> <p>20 (Whereupon an excerpt from Exhibit 8, bystander 21 video, was played after which the deposition continued 22 as follows:)</p> <p>23 <b>Q. Okay. Now, how do you guys have Mr. Means at</b> <b>24 this point? How are you lifting him in this video in</b></p>	<p>Page 122</p> <p>1 <b>They offered the chance; right, Lafferty</b></p> <p>2 <b>called you and said come give us a statement. You said</b> <b>3 I'll get back to you and you talked to several lawyers</b> <b>4 and you decided not to give him a statement?</b></p> <p>5 A. No.</p> <p>6 <b>Q. You didn't give him one, did you?</b></p> <p>7 A. I didn't decide not to. Nobody ever said that 8 I wasn't going to.</p> <p>9 <b>Q. You didn't run down there to offer to clear</b> <b>10 yourself, did you?</b></p> <p>11 A. I needed to talk with counsel first.</p> <p>12 <b>Q. Why do people get lawyers?</b></p> <p>13 MR. RUGGIER: Objection.</p> <p>14 <b>Q. How many times have you questioned somebody --</b> <b>15 I'll go back over here for a second.</b></p> <p>16 A. Okay.</p> <p>17 <b>Q. How many times have you questioned a suspect</b> <b>18 who's invoked their right to get a lawyer and told them</b> <b>19 that guilty people get lawyers? You ever told them</b> <b>20 that?</b></p> <p>21 A. No.</p> <p>22 <b>Q. Really?</b></p> <p>23 A. Really.</p> <p>24 <b>Q. You never told a suspect that you're</b></p>

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<p style="text-align: right;">Page 125</p> <p>1 questioning that they don't need a lawyer, they should    2 just talk to you and clear this up?    3 A. No. If somebody mentions wanting an attorney    4 to me, I allow them to have that right.    5 Q. I'm sure you allow them to have the right.    6 I'm not suggesting you don't allow them to have the    7 right. What I'm asking is do you ever question them    8 about why would they want to get a lawyer? Be easier    9 just to talk to you now and clear all this up.    10 A. No.    11 Q. Okay. Give me a second here. I want to try    12 one more thing. All right. Let me show it to you on    13 here.    14 (Whereupon an excerpt from Exhibit 8, bystander    15 video, was played after which the deposition continued    16 as follows:)    17 Q. Now, we're at 1 minute and 20 seconds on the    18 video here. Now, is that Peterson running back towards    19 the cruiser?    20 A. Yeah.    21 Q. Let me ask you first, as we watched this in    22 the very beginning -- let me find the SUV. Okay. Now,    23 is yours the SUV?    24 A. No.</p>	<p style="text-align: right;">Page 127</p> <p>1 report somewhere between May 2nd and May 5th of 2020,    2 you didn't know the video I just showed you existed,    3 did you?    4 A. Correct.    5 Q. When did you find out that video existed?    6 A. Months later.    7 Q. Now, did you place Billy Means in handcuffs?    8 A. Yeah.    9 Q. Okay. Was he cuffed behind his back    10 initially?    11 A. Initially.    12 Q. Okay. Describe that to me. How did that --    13 when you got him over there and you step over him or    14 stomp on him, depending on who you believe, was he in    15 handcuffs at that point?    16 A. I believe so.    17 Q. When did you put the handcuffs on him?    18 A. Just right around that time. Just as soon as    19 we got him there Peterson went to check on the cruiser,    20 make sure it didn't get hit by a train and then cuffs.    21 Q. So before Peterson runs away in the video    22 you've already got him handcuffed?    23 A. No, I'm starting to. I cuffed him by myself.    24 Q. Okay, but did you cuff him prior to your leg</p>
<p style="text-align: right;">Page 126</p> <p>1 Q. Okay. You're in this --    2 A. Charger.    3 Q. The charger?    4 A. Uh-huh.    5 Q. Okay. You all have got the road blocked at    6 this point pretty much?    7 A. There might have been a little bit on it, but    8 I don't know.    9 Q. All right. I think I just messed that up    10 again.    11 MR. RUGGIER: You getting all that down?    12 Q. So it's your testimony that that foot that    13 went up in the air and went down was just stepping over    14 this guy?    15 A. Correct.    16 Q. Okay. Was he on his back or on his front at    17 that point?    18 A. I think front.    19 Q. If you had put your foot on his head in a    20 stomping manner like these ladies described, you would    21 have needed to do a use a force report for that;    22 correct?    23 A. Correct.    24 Q. At the time you filled out this use of force</p>	<p style="text-align: right;">Page 128</p> <p>1 going up in the air in the video?    2 A. I think so, yeah.    3 Q. Your report on Page 13 there says "I grabbed    4 Mr. Means's right wrist and told him to roll over. He    5 refused." Do you know if he refused or he was unable?    6 A. He didn't. He didn't comply.    7 Q. You wrote refused though.    8 A. He refused to comply.    9 Q. "And attempted to grab my right wrist with his    10 left hand. I was able to move my hand to stop him and    11 then I rolled him over and secured him in cuffs." So    12 after you guys got him out of this area, this swampy,    13 marshy area and drug him across the railroad tracks,    14 you then rolled him over to put cuffs on him; is that    15 right?    16 A. Yes.    17 Q. So was he laying on his back and you rolled    18 him onto his front?    19 A. Best I can remember, yeah.    20 Q. Were you concerned about that damaging his    21 spinal cord?    22 A. No.    23 Q. Why not?    24 A. Because we had no indication that he had a</p>

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<p style="text-align: right;">Page 129</p> <p>1 spinal cord injury.</p> <p>2 Q. He'd flown off a motorcycle; right, and landed</p> <p>3 in a ravine; right?</p> <p>4 A. Again, I had no indication to think that he</p> <p>5 had a spinal cord injury.</p> <p>6 Q. At the time after you guys had drug him across</p> <p>7 the railroad tracks, there was no danger of a train</p> <p>8 hitting him at that point, was there?</p> <p>9 A. After we got him away from the tracks,</p> <p>10 correct.</p> <p>11 Q. At the point you rolled him over there was no</p> <p>12 danger of a train?</p> <p>13 A. Correct.</p> <p>14 Q. Was there anything to prevent you from</p> <p>15 handcuffing him in the front?</p> <p>16 A. Officer safety.</p> <p>17 Q. Okay. Could you have handcuffed him through a</p> <p>18 belt loop, for instance, on his side?</p> <p>19 A. I never seen somebody do that and if they had</p> <p>20 a weapon on their side they'd still be able to access</p> <p>21 it.</p> <p>22 Q. Did Mr. Means have a weapon?</p> <p>23 A. Not to my knowledge.</p> <p>24 Q. Okay. Well, you investigated all this; right?</p>	<p style="text-align: right;">Page 131</p> <p>1 MR. FORBES: Nine.</p> <p>2 HARVEY DEPOSITION EXHIBIT NO. 9</p> <p>3 (Crash Report was marked</p> <p>4 for identification purposes as Harvey</p> <p>5 Deposition Exhibit No. 9.)</p> <p>6 Q. Can you tell me what that is, Officer?</p> <p>7 A. Crash report. State of West Virginia crash</p> <p>8 report.</p> <p>9 Q. Go over to Page 2. Do you know who completed</p> <p>10 this?</p> <p>11 A. I know it was a trooper. I'm not familiar</p> <p>12 with them.</p> <p>13 Q. Would this have been the trooper that was</p> <p>14 waiting at the end of the road in Boone County?</p> <p>15 A. More than likely.</p> <p>16 Q. Under the narrative it indicates that "Vehicle</p> <p>17 Number 1 was traveling south on West Virginia Route 3</p> <p>18 at approximately 60 miles per hour while being pursued</p> <p>19 by South Charleston Police Department." Do you agree</p> <p>20 with that?</p> <p>21 A. Is that Route 3 just that straight stretch I</p> <p>22 showed you?</p> <p>23 Q. Well, I think Route 3 is the whole roadway.</p> <p>24 A. Then, yeah, if Route 3 dictates that straight</p>
<p style="text-align: right;">Page 130</p> <p>1 Did he ever have a weapon?</p> <p>2 A. Whenever he was reaching under the water it's</p> <p>3 possible there could have been one in the ravine, but</p> <p>4 no, we never located one.</p> <p>5 Q. You think you missed it?</p> <p>6 A. I'm not saying we did or didn't. I'm just</p> <p>7 saying we don't know what he could have been reaching</p> <p>8 for under the water because he was reaching towards his</p> <p>9 waist band and pockets.</p> <p>10 Q. As far as you know there's nothing but mud</p> <p>11 down there in that water; right?</p> <p>12 A. Correct.</p> <p>13 Q. You all didn't go in the water and find any</p> <p>14 kind of weapon, did you?</p> <p>15 A. Correct.</p> <p>16 Q. Correct that did you not?</p> <p>17 A. Correct we didn't go in the water.</p> <p>18 Q. Correct that you never found a weapon on</p> <p>19 Mr. Means?</p> <p>20 A. Correct.</p> <p>21 Q. All right. Let me hand you this.</p> <p>22 MR. FORBES: We'll make this number --</p> <p>23 what number am I at, 8?</p> <p>24 COURT REPORTER: Nine.</p>	<p style="text-align: right;">Page 132</p> <p>1 stretch I told you about, yes, I would agree with it.</p> <p>2 Q. It says it "crashed into an embankment and</p> <p>3 Vehicle Number 1 came to a rest approximately 60 feet</p> <p>4 to the south beside the railroad tracks." Now,</p> <p>5 Mr. Means's body, when you found it, was close to the</p> <p>6 intersection, but the motorcycle was a good ways down</p> <p>7 the ravine; right?</p> <p>8 A. I think so.</p> <p>9 MR. FORBES: Make this Number 10.</p> <p>10 HARVEY DEPOSITION EXHIBIT NO. 10</p> <p>11 (Photograph was marked for</p> <p>12 identification purposes as Harvey</p> <p>13 Deposition Exhibit No. 10.)</p> <p>14 Q. Take a look at that for me and show Duane the</p> <p>15 picture you guys produced. All right. Do you see that</p> <p>16 picture there?</p> <p>17 A. Yes.</p> <p>18 Q. Do you see where the motorcycle is in that?</p> <p>19 A. Yeah.</p> <p>20 Q. Would you agree with me that where you guys</p> <p>21 were dealing with Mr. Means was up here by this little,</p> <p>22 for lack of a better word, waterfall?</p> <p>23 A. I think it was after that.</p> <p>24 Q. All right. Let's go back to the --</p>

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<p style="text-align: right;">Page 133</p> <p>1 A. Because you can see it where the items are, 2 like the backpack, I think it was around there. 3 <b>Q. So you think it was down by -- you think he</b> <b>4 was down by where that backpack is?</b> 5 A. Somewhere between, yeah, the motorcycle and in 6 that area prior to the motorcycle. 7 <b>Q. Let's do this one.</b> 8 <b>HARVEY DEPOSITION EXHIBIT NO. 11</b> 9 (Photograph was marked for 10 identification purposes as Harvey 11 Deposition Exhibit No. 11.) 12 A. But I don't recall exactly. 13 <b>Q. I'm going to hand you Number 11. See where</b> <b>14 that little waterfall area is?</b> 15 A. Yeah. 16 <b>Q. Okay. Do you see where the box is, that gray</b> <b>17 metal box?</b> 18 A. Yeah. 19 <b>Q. Okay. Now, we just watched that video. Can</b> 20 <b>you see that you basically, you all drug him to the</b> 21 <b>other side of that little metal box?</b> 22 A. Yeah. 23 <b>Q. Okay. Does that appear to be where he would</b> 24 <b>have to be over towards that little waterfall as</b></p>	<p style="text-align: right;">Page 135</p> <p>1 <b>area over in here?</b> 2 A. Looks like it. 3 <b>Q. You described this as being three feet deep.</b> 4 <b>Do you have any knowledge how you got that measurement?</b> 5 A. Just where it was able to cover him and his 6 hands. 7 <b>Q. He was laying on his back; right?</b> 8 A. Uh-huh. 9 MR. FORBES: Duane, if you want to take a 10 break, let's go ahead because the next section may take 11 a minute. 12 MR. RUGGIER: Sounds good. 13 VIDEO OPERATOR: Time is 12:30 p.m. 14 We're off the record. 15 (A brief recess was taken after which the 16 deposition continued as follows: ) 17 VIDEO OPERATOR: Time is 12:52 p.m. 18 We're on the record. 19 BY MR. FORBES: 20 <b>Q. All right, Officer Harvey, the manner in which</b> 21 <b>you and Corporal Peterson removed Billy Means from the</b> 22 <b>ravine and drug him across the railroad tracks was</b> 23 <b>grabbing him by his wrists; right?</b> 24 A. Yeah.</p>
<p style="text-align: right;">Page 134</p> <p>1 opposed to on down where the records and the backpack 2 area is? 3 A. Possibly. 4 <b>Q. Okay. Let me show you the video again.</b> 5 (Whereupon an excerpt from Exhibit 8, bystander 6 video, was played after which the deposition continued 7 as follows: ) 8 MR. RUGGIER: How much longer you going 9 to be with him, do you have any idea? 10 MR. FORBES: Half hour or so, maybe more? 11 MR. RUGGIER: I may not make it. 12 MR. FORBES: What's that? 13 MR. RUGGIER: I may have to go to the 14 restroom. 15 MR. FORBES: Oh, that's fine. Yeah, we 16 can take a break in a second. 17 <b>Q. Here, let me show you. Let's just get past</b> 18 <b>this. Would you agree with me looking at the video</b> 19 <b>there you guys are to the left of the box?</b> 20 A. Uh-huh. 21 <b>Q. Okay, which would put you in this area and not</b> 22 <b>down in that area. Do you see what I'm saying?</b> 23 A. Yeah. 24 <b>Q. You'd agree it was closer toward the waterfall</b></p>	<p style="text-align: right;">Page 136</p> <p>1 <b>Q. Okay, so one of you had one wrist, the other</b> 2 <b>had the other wrist and you all just drug him by his</b> 3 <b>arms across the tracks?</b> 4 A. Yeah, best I can recall. 5 <b>Q. I want you to hand you another picture. This</b> 6 <b>will be Exhibit 12.</b> 7 <b>HARVEY DEPOSITION EXHIBIT NO. 12</b> 8 (Photograph was marked for 9 identification purposes as Harvey 10 Deposition Exhibit No. 12.) 11 <b>Q. I'd asked you some questions earlier about</b> 12 <b>where he was when you drug him out of the ravine in</b> 13 <b>relation to the box and the motorcycle. Would you</b> 14 <b>agree with me, looking on Exhibit 12, you can kind of</b> 15 <b>see the distance there between that box, the gray box,</b> 16 <b>and how far down the motorcycle was?</b> 17 A. Yeah. 18 <b>Q. So when we're looking at 12, again, to be</b> 19 <b>clear, we've got some officers walking, but you guys</b> 20 <b>would have been up in that area toward the road where</b> 21 <b>Billy was; right?</b> 22 A. Yeah, just in around between here and there. 23 I'm not sure exactly where, but somewhere in there, 24 somewhere prior.</p>

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1 Q. Well, you drug him, we can watch on the video  
2 again if you want, but you clearly drug him this way  
3 over behind that metal box; right?  
4 A. Behind it, yes, like on this side of the box.  
5 Q. Yeah, so in this Exhibit 12, it would have  
6 been over in that area; right?  
7 A. That video is at an angle. I don't know  
8 exactly where in reference -- I know it was on this  
9 side of the box, but now if it was here or here I don't  
10 know.  
11 Q. Okay, but that's where you drug him to. Where  
12 you started was back over here towards the roadway;  
13 right?  
14 A. Just somewhere in around here. I don't recall  
15 exactly.  
16 Q. All right. Fair enough. Now, let me hand  
17 you -- we'll make this 13.  
18 HARVEY DEPOSITION EXHIBIT NO. 13  
(Photograph was marked for  
identification purposes as Harvey  
Deposition Exhibit No. 13.)  
22 Q. What's that a picture of?  
23 A. Mr. Means.  
24 Q. Okay. And it looks to me like at that point

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1 can see his --  
2 Q. What it looks like to me too. Like he's got  
3 his arms slumped in a way that --  
4 A. Looks like it.  
5 Q. So it's your belief, looking at 14, that would  
6 have been a picture of him while his arms are  
7 handcuffed behind him?  
8 A. Yeah.  
9 Q. In a propped up or looks like a sitting up  
10 position?  
11 A. Yeah. Whenever he had the Carhart jacket on  
12 he was complaining like freezing, you know, like  
13 hypothermia or something like that, so we removed the  
14 jacket and then moved the cuffs to the front. That's  
15 why this one jacket, this one no jacket.  
16 Q. In 14 he's got the jacket on, he's complaining  
17 about being cold?  
18 A. Yeah, like freezing to death or something like  
19 that.  
20 Q. So 13 the picture was taken afterwards, after  
21 you'd removed the jacket?  
22 A. Yeah, for a second.  
23 Q. Who took all these pictures?  
24 A. I don't know for those.

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1 he's handcuffed with his arms up above his head. Did  
2 you change where his handcuffs were at some point?  
3 A. We moved his cuffs to the front.  
4 Q. Okay. Why did you do that?  
5 A. Because he was complaining of not -- it may  
6 even been for the medics, but at some point he was  
7 complaining of, like, not being able to breathe or  
8 something like that and we cleared him of weapons and  
9 patted him down, search him and make sure he didn't  
10 have any weapons.  
11 Q. Okay, so either he was complaining or the  
12 medics asked you to move the handcuffs to the front?  
13 A. Yeah, one or the other.  
14 Q. Let's do -- this one would be 14.  
15 HARVEY DEPOSITION EXHIBIT NO. 14  
(Photograph was marked for  
identification purposes as Harvey  
Deposition Exhibit No. 14.)  
19 Q. What's that a picture of?  
20 A. Mr. Means.  
21 Q. Now, in that one it looks like he's propped up  
22 somehow. Can you tell whether his handcuffs are in the  
23 front or the back in that picture?  
24 A. They look like they're in the back. Like I

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1 Q. Did you take any of them?  
2 A. I think that I took a couple.  
3 Q. You may have taken -- I know we have a stack  
4 of about 30 pictures. You're saying you may have taken  
5 some of them?  
6 A. Yeah, but not all.  
7 Q. Okay, but all the pictures I've shown you here  
8 today look to be true and accurate representations of  
9 what you saw at the scene; is that right?  
10 A. Correct.  
11 Q. In 14, Mr. Means has sort of some white stuff  
12 around his face. Is that something you'd expect to see  
13 after somebody was pepper sprayed?  
14 MR. RUGGIER: You want to point to the  
15 white stuff you're referring to?  
16 Q. I see what just looks like spit to me, but  
17 right here at the bottom of his lip.  
18 A. Yeah, it looks like spit to me.  
19 Q. Looks like spit.  
20 A. OC could cause that. I don't know, I mean.  
21 Q. Okay. Because he was pepper sprayed inside a  
22 helmet. At this point somebody's taken the helmet off.  
23 Did you all do that?  
24 A. I did not.

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<p>1    Q. Do you know who did?</p> <p>2    A. Not right off. I never -- I didn't see 3 whoever took the helmet off.</p> <p>4    Q. You mentioned in your report on Page 13, the 5 last line of the second to last paragraph it says --</p> <p>6        MR. RUGGIER: Object to the form of the 7 question. You said your report.</p> <p>8        MR. FORBES: Well, it's his narrative.</p> <p>9        MR. RUGGIER: You talking about that one?</p> <p>10   Okay. Not the crash report, the entire report.</p> <p>11        MR. FORBES: No.</p> <p>12   Q. So in your narrative --</p> <p>13   A. Exhibit 3.</p> <p>14   Q. Yes.</p> <p>15   A. Okay.</p> <p>16   Q. Exhibit 3 on Page 13, second to last paragraph 17 it says Mr. Means had prior firearm offenses.</p> <p>18   A. Yes.</p> <p>19   Q. How did you get the information for that in 20 this report?</p> <p>21   A. Checking his history back at the station.</p> <p>22   Q. All right. Let me make sure I've got it very 23 clear. At the time that you were in this pursuit and 24 the time that you're dealing with Mr. Means in the</p>	<p>Page 141</p> <p>1    Q. Okay. Whose decision is it to terminate a 2 pursuit?</p> <p>3    A. It can come down to the officer that 4 initiated, the first one, you know, to see what's going 5 on, see how stuff is changing and then also the 6 supervisor.</p> <p>7    Q. What about the backup officer, the second car?</p> <p>8    A. He could, the backup officer could.</p> <p>9    Q. Okay. He could recommend that the pursuit be 10 terminated; right?</p> <p>11   A. Yeah, I never heard of it happening, but it's 12 possible.</p> <p>13   Q. Okay. At no point during this pursuit did you 14 ever recommend that the pursuit be stopped, did you?</p> <p>15   A. No.</p> <p>16   Q. You would agree with me that you thought 17 Mr. Means was driving unsafely for most of this 15 18 minute chase; right?</p> <p>19   A. Unsafely, yes.</p> <p>20   Q. By unsafe he was a danger to other potential 21 vehicles?</p> <p>22   A. If they were there, yes. There wasn't very 23 much traffic on the road.</p> <p>24   Q. He got lucky; right, he was going around blind</p>
<p>1    video I showed you, you were not aware of who the 2 person was or what kind of criminal history they had; 3 correct?</p> <p>4    A. Correct.</p> <p>5    Q. Okay, so you didn't know Mr. Means would have 6 had any firearm offenses at the time that you were 7 placing handcuffs on him, for instance?</p> <p>8    A. Correct.</p> <p>9    Q. Okay. All right. What is your understanding 10 of South Charleston's emergency response and vehicular 11 pursuit policy?</p> <p>12   A. Just as previously stated, the totality of 13 circumstance. You got to take in account of the public 14 safety, like other cars on the road, how many cars on 15 the road, time of day, speeds and where you're at.</p> <p>16   Q. Are there any times when you have to disengage 17 a pursuit under that policy?</p> <p>18   A. I would say if it gets too, like too reckless, 19 too much danger, but it's never like black and white. 20 There's a middle ground there.</p> <p>21   Q. Okay, so is it your understanding from the 22 policy there's always some middle ground? There's 23 nothing like a shall or you must do something?</p> <p>24   A. Correct, my understanding.</p>	<p>Page 142</p> <p>1    curves. You didn't know what was on your side of the 2 curve, did you?</p> <p>3    A. We didn't see any vehicles out.</p> <p>4    Q. I understand, but your words describe it as a 5 blind curve.</p> <p>6    A. Correct.</p> <p>7    Q. What's a blind curve to you?</p> <p>8    A. Like you can't see around the other side type 9 turn.</p> <p>10   Q. As you're going through this pursuit, 11 Mr. Means is going around blind curves in the wrong 12 lane of traffic; correct?</p> <p>13   A. Yeah, like in the middle like coming over, 14 yeah.</p> <p>15   Q. Yeah, I mean, you wrote he's in the opposing 16 lane; right?</p> <p>17   A. Yeah. You could see how the road's small.</p> <p>18   Q. You wrote "If there were any vehicles on the 19 other side of the turn he would have struck them." Not 20 that he might have, not that he probably --</p> <p>21   A. If they were there, yes.</p> <p>22   Q. Right and they're blind curves so you don't 23 know whether they're there or not as this pursuit's 24 going on?</p>

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<p style="text-align: right;">Page 145</p> <p>1 A. Correct.</p> <p>2 Q. Nevertheless you continued with the pursuit?</p> <p>3 A. Correct.</p> <p>4 Q. You knew there were vehicles that had been 5 called by Metro that were at the end of the road, law 6 enforcement vehicles, that could have tried to 7 apprehend Mr. Means; right?</p> <p>8 A. Typically they'll stay off the road, you know, 9 wait for us to come past them.</p> <p>10 Q. All right. On the route somewhere there's 11 some law enforcement vehicles that could have tried to 12 apprehend Mr. Means even if you guys would have 13 disengaged; correct?</p> <p>14 A. Correct. I would say somewhere down there 15 they were.</p> <p>16 Q. All right. Let's make this --</p> <p>17 MR. FORBES: What number am I on, 15?</p> <p>18 MR. RUGGIER: Well, that says Exhibit 6.</p> <p>19 MR. FORBES: Well, that's how you guys 20 gave it to us.</p> <p>21 HARVEY DEPOSITION EXHIBIT NO. 15 22 (Emergency Response and 23 Vehicular Pursuit Policy was marked for 24 identification purposes as Exhibit</p>	<p style="text-align: right;">Page 147</p> <p>1 policy?</p> <p>2 A. It appears so.</p> <p>3 Q. Under Page 1 under 23.1 it indicates that 4 "Public safety and protections of human life are 5 paramount concerns. The need to apprehend a law 6 violator or respond to a location or situation does not 7 normally justify creation of new or additional risks of 8 injury or death to police officers or to others." Do 9 you agree with that?</p> <p>10 A. Yeah.</p> <p>11 Q. Okay and others there includes generally the 12 public; right?</p> <p>13 A. Yeah.</p> <p>14 Q. It includes people that you're pursuing, 15 doesn't it?</p> <p>16 MR. RUGGIER: I'm going to object to the 17 form of the question. He's not the creator of the 18 policy, so you can ask him.</p> <p>19 MR. FORBES: I'm going to ask him because 20 he's suppose to know the policy, I assume, as a South 21 Charleston police officer. Seems like he might not 22 have been trained very well on it, but in any event he 23 can answer it and you can make sure objection.</p> <p>24 MR. RUGGIER: No speaking objections.</p>
<p style="text-align: right;">Page 146</p> <p>1 Deposition Exhibit No. 15.)</p> <p>2 Q. This is Exhibit 15. Actually let me hand 3 you --</p> <p>4 MR. FORBES: You know what, mark me 5 another one. I got my notes on it.</p> <p>6 MR. RUGGIER: Is this the policy?</p> <p>7 MR. FORBES: Yeah.</p> <p>8 Q. Hang on. Hang on. Take a look over that and 9 then I've got some questions for you.</p> <p>10 A. Okay.</p> <p>11 Q. Just tell me when you've had a chance to read 12 it.</p> <p>13 A. Just the first there, that 23?</p> <p>14 Q. I'm going to ask you questions about the whole 15 thing there, so it runs from -- it's numbered Page 141 16 through 146 titled Emergency Response and Vehicular 17 Pursuit, so just read through however much you want and 18 I'm going to read you some sections and ask you 19 questions, so.</p> <p>20 A. Okay. Okay.</p> <p>21 Q. Okay, you've had a chance to read over that?</p> <p>22 A. Yes.</p> <p>23 Q. Is that the South Charleston Police 24 Department's emergency response and vehicular pursuit</p>	<p style="text-align: right;">Page 148</p> <p>1 MR. FORBES: I thought yours was a 2 speaking objection.</p> <p>3 MR. RUGGIER: I thought yours was a 4 speaking objection.</p> <p>5 MR. FORBES: I was replying.</p> <p>6 MR. RUGGIER: Yours was an editorial 7 commentary.</p> <p>8 MR. FORBES: Good for the goose is good 9 for the -- yeah.</p> <p>10 MR. RUGGIER: Agree.</p> <p>11 A. I would assume others could be either.</p> <p>12 Q. Could be anybody. Doesn't say it's limited to 13 just the public or children or old people. It's 14 others, all others; right?</p> <p>15 A. Yeah, whenever somebody put that they can mean 16 either. I don't know what their intent was.</p> <p>17 Q. "The need to apprehend a serious criminal or 18 to provide emergency services may justify driving 19 outside normally acceptable law and rules of the road." 20 What's a serious criminal to you?</p> <p>21 A. For me a serious criminal is somebody that's 22 committed a violent crime or somebody that could be 23 fleeing from us, I mean, because usually they're 24 fleeing for a reason and you don't know what that</p>

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<p>1 reason is until the pursuit ends.</p> <p>2 Q. So if someone's fleeing from you you're 3 automatically in the category of a serious criminal, is 4 that what you're saying?</p> <p>5 A. I would say you're definitely getting there.</p> <p>6 I mean, I'm not saying that it's black and white. It 7 could change, but, yeah, I think you're getting there 8 because you're running for a reason.</p> <p>9 Q. All right. Look to the last sentence of 23.1. 10 "Irresponsible, careless and reckless driving are 11 prohibited and will not be tolerated." The driving 12 that went on in this 15 minute chase became dangerous 13 to potential members of the public as well as to 14 Mr. Means, didn't it?</p> <p>15 A. No.</p> <p>16 Q. It wasn't dangerous to members of the public?</p> <p>17 A. My driving and --</p> <p>18 Q. I didn't say your driving. I said the 19 driving.</p> <p>20 A. This is talking about -- I believe this is in 21 reference to our driving.</p> <p>22 Q. Okay, so you think that this is in reference 23 to your driving?</p> <p>24 A. Yes.</p>	Page 149	Page 151
<p>1 Q. All right. Let's go over to 23.2, the 2 definitions. "Vehicle pursuit. An active attempt by 3 an officer in a police vehicle to apprehend one or more 4 occupants of a moving vehicle providing the driver of 5 such vehicle is aware of the attempt and is resisting 6 apprehension by maintaining or increasing speed or 7 ignoring the attempt of the officer to stop the 8 driver."</p> <p>9 Now, on down there the bullet points it lists what 10 a serious felony is. "A felony that involves an actual 11 or threatened attack which the officer has reasonable 12 cause to believe could or has resulted in death or 13 serious bodily injury, i.e. aggravated assault, armed 14 robbery, murder." Can we agree that there was not a 15 serious felony under this definition that you guys were 16 concerned of with Mr. Means?</p> <p>17 MR. RUGGIER: Objection just to the 18 extent that he can't testify to what Peterson was 19 thinking or knew.</p> <p>20 MR. FORBES: Okay. I'm just going to ask 21 him about what he knows.</p> <p>22 Q. To the extent that in your pursuit here as the 23 second car, can we agree that there was no 24 circumstances presented to you that there was a serious</p>	Page 150	Page 152
<p>1 <b>felony in progress?</b></p> <p>2 A. As far as this definition goes, correct.</p> <p>3 Q. You don't disagree with your own Department's 4 definition, do you?</p> <p>5 A. There can be multiple different, you know, 6 felonies. This just gives a few examples.</p> <p>7 Q. Of a serious felony?</p> <p>8 A. Yeah, but as far as this goes, correct.</p> <p>9 Q. All right. Let's go over to Page 143. 23.4 10 has "The Communications are to be advised of a brief 11 description of the seriousness of the violation of the 12 vehicle being pursued and the direction of travel if 13 appropriate." The only violation that was ever 14 reported by Corporal Peterson to Metro was the expired 15 registration or tag; correct?</p> <p>16 MR. RUGGIER: Object to the form of the 17 question. I don't believe that's correct, but go 18 ahead.</p> <p>19 A. He said that registration was improper and 20 then that he started fleeing from him.</p> <p>21 Q. Okay, but prior to the fleeing, we're just 22 talking about the registration; right? That's the only 23 violation that he would have had probable cause to 24 initiate a stop on; right?</p>		

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<p style="text-align: right;">Page 153</p> <p>1 ensued, you heard the radio where Peterson is talking 2 about parts are falling off of this motorcycle; right? 3 A. Yeah. 4 Q. Okay. You yourself described Mr. Means's 5 motorcycle as going around blind curves in an unsafe 6 manner where he could have struck or would have, you 7 actually said would have, struck any oncoming vehicles; 8 right? 9 A. Yeah. 10 Q. Speed in relation to road and environmental 11 conditions. The video we went over earlier showed 25 12 miles an hour zones; correct? 13 A. Yeah, correct. 14 Q. The radio that we listened to had both 15 yourself and Corporal Peterson describing Mr. Means as 16 going in excess of 40 miles an hour? 17 A. Definitely Corporal Peterson. I can't 18 remember if I called the speeds, but yeah. 19 Q. All right. I believe we listened to at least 20 one section where you did, but regardless you heard the 21 radio say, and the radio, if you're recorded on there, 22 it will be what it will be; right? 23 A. Uh-huh. 24 Q. Okay. You yourself have now testified that in</p>	<p style="text-align: right;">Page 155</p> <p>1 Q. So it's your duty to abide by these rules; 2 right? 3 A. Yes. 4 Q. Under 23.9, Initiating the Pursuit, the end of 5 that says "The in car video and audio recording 6 equipment will be activated when available and remain 7 activated whenever a member is contemplating initiating 8 a pursuit." Your all's vehicles on this May 2nd, 2020 9 date didn't have any in car video or audio recording; 10 right? 11 A. Correct. 12 Q. In fact, during your time at South Charleston, 13 the Department's never provided you with any of that, 14 have they? 15 A. Just recently with the Metro Drug Unit 16 vehicle. 17 Q. Okay. 18 A. But as far as working normal road, no. 19 Q. Prior to May 2nd, 2020 had they ever provided 20 you with in car audio or video recording equipment? 21 A. No. 22 Q. However, you testified earlier you went out on 23 your own and bought some which was available and 24 activated at one point; right?</p>
<p style="text-align: right;">Page 154</p> <p>1 pursuing Mr. Means, you had to go over 60 miles an hour 2 which would indicate that he was going too fast for the 3 speed zone; right? 4 A. At the end. Just at the end. 5 Q. He was going too fast for the speed zone at 6 various parts throughout this, wasn't he? 7 A. Yeah, but as far as the 60, it was just at the 8 end. Other parts were lower than that. 9 Q. Okay. We passed at least one school and one 10 church that we talked about; right? 11 A. Yeah. 12 Q. And a park with a kids' play area; right? 13 A. Yeah. 14 Q. And houses all through this pursuit zone, for 15 lack of a better word; right? 16 A. There were houses along the highway road. 17 Q. All right, 23.9. Vehicle pursuits. "The 18 following procedures are intended to reduce the hazards 19 involved in vehicle pursuits while still assuring the 20 apprehension of law violators. In this regard, all 21 Department members will remain familiar with these 22 procedures and abide by them." You're a Department 23 member; right? 24 A. Yes.</p>	<p style="text-align: right;">Page 156</p> <p>1 A. Yes. 2 Q. And you were actually told by the chief to get 3 rid of it? 4 A. Yes. 5 Q. All right. Let's go down to 23.9.4. 6 Termination of pursuit. "The decision to pursue is not 7 irreversible." Would you agree with that? 8 A. Yes. 9 Q. You have to factor things in and make a 10 decision of whether to continue a pursuit, whether it's 11 safe; right? 12 A. Yep. 13 Q. "Officers must continually question whether 14 the seriousness of the crime and other factors justify 15 continuing the pursuit." Then it says "A vehicle 16 pursuit shall," and shall is underlined, "be terminated 17 under any of the following circumstances." 18 I know I asked you before when you started reading 19 this whether there was any black and white shall issues 20 and you said no. That's incorrect, isn't it? This 21 actually has a shall in it. 22 A. This says shall. 23 Q. And that's a policy that, based on what we 24 read a little bit ago, you're to abide by and be</p>

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<p>1 informed of; right?</p> <p>2 A. Yeah.</p> <p>3 Q. So there are conditions where you, under these</p> <p>4 rules, shall terminate a vehicle pursuit; correct?</p> <p>5 A. Yes, but then the shall says "If in the</p> <p>6 opinion of," that's what I was talking about was the</p> <p>7 black and white. Or, sorry, where it wasn't the black</p> <p>8 and white, where it's ever changing.</p> <p>9 Q. Oh, you mean the first bullet point where it</p> <p>10 says "If in the opinion of?"</p> <p>11 A. Yes.</p> <p>12 Q. Okay. What about the second bullet point, got</p> <p>13 anything in there giving you an opinion?</p> <p>14 A. No.</p> <p>15 Q. How about the third one?</p> <p>16 MR. RUGGIER: Objection to the form.</p> <p>17 Answer.</p> <p>18 A. It says creates the recognized risk of a</p> <p>19 collision, so that's something that could be changing.</p> <p>20 Q. Okay. Would that be something like he was</p> <p>21 going at a high rate of speed around blind curves and</p> <p>22 whenever he would make these blind turns he would cross</p> <p>23 into the other lane of traffic? "If there were any</p> <p>24 vehicles in the other side in the turn, he would have</p>	Page 157	<p>1 about the crime which is a misdemeanor. I don't know</p> <p>2 exactly what he's got going on.</p> <p>3 You heard the radio traffic. He said that the tags</p> <p>4 didn't match and then the suspect kept looking back at</p> <p>5 him. So through my training and experience, that would</p> <p>6 be suspicion of a stolen vehicle which would be a</p> <p>7 felony.</p> <p>8 Q. Okay.</p> <p>9 A. But, again, on this --</p> <p>10 Q. The only thing that he's wanted for at this</p> <p>11 point is improper registration; right? You don't have</p> <p>12 any evidence -- you didn't have any evidence on May 2nd</p> <p>13 of 2020 that he stole a vehicle, did you?</p> <p>14 MR. RUGGIER: Objection in that, again,</p> <p>15 he is just the assisting officer. He's not the one</p> <p>16 initiating the pursuit.</p> <p>17 MR. FORBES: I'm asking him.</p> <p>18 MR. RUGGIER: I understand, but --</p> <p>19 MR. FORBES: You can object. Just</p> <p>20 object.</p> <p>21 MR. RUGGIER: I did.</p> <p>22 Q. Okay.</p> <p>23 A. Just where I was assisting the pursuit. I</p> <p>24 don't have the specific knowledge on what the</p>	Page 159
<p>1 struck them;" right, that's a recognized risk of</p> <p>2 collision, isn't it?</p> <p>3 A. If there's heavy traffic.</p> <p>4 Q. No, no, no. You didn't write if there's heavy</p> <p>5 traffic. On May 2nd, 2020 you wrote "If there were any</p> <p>6 vehicles on the other side of the turn, he would have</p> <p>7 struck them;" right?</p> <p>8 A. Correct.</p> <p>9 Q. That's a risk of collision, isn't it?</p> <p>10 A. I mean, there's a risk of collision any time</p> <p>11 somebody runs from the police, any time they break the</p> <p>12 speed limit.</p> <p>13 Q. You documented in here that he was going</p> <p>14 around a blind curve in the opposite lane of traffic</p> <p>15 and if there had been a vehicle, he would have struck</p> <p>16 it; right?</p> <p>17 A. Yes.</p> <p>18 Q. You continued the pursuit anyway?</p> <p>19 A. Yes.</p> <p>20 Q. Are you saying -- is it your testimony that</p> <p>21 that is within the mean -- not within the meaning of</p> <p>22 creating a risk of collision?</p> <p>23 A. Again, you'd have to speak with the initial</p> <p>24 officer that has all the information because this talks</p>	Page 158	<p>1 initiating officer had.</p> <p>2 Q. Okay. As the assisting officer, should you</p> <p>3 have the knowledge so that you can assess this during</p> <p>4 the pursuit?</p> <p>5 A. I'm just there to help the initial officer to</p> <p>6 make sure everything's okay. Like if they stopped or</p> <p>7 something like that and there's some type of incident</p> <p>8 that happens there and I'm there to help people know</p> <p>9 where we're at.</p> <p>10 Q. Are you saying you can't make a decision to</p> <p>11 stop the pursuit?</p> <p>12 A. It could be possible, but my main goal there</p> <p>13 is to make sure the initial officer is okay and help</p> <p>14 them out with whatever he needs.</p> <p>15 Q. But wouldn't you have a responsibility to</p> <p>16 recommend to the supervisor on the line that a pursuit</p> <p>17 should stop if it's unsafe?</p> <p>18 A. I could.</p> <p>19 Q. I'm not asking if you could. I'm asking do</p> <p>20 you believe you would have had a responsibility to do</p> <p>21 that?</p> <p>22 A. Yeah.</p> <p>23 Q. Okay. Look on down, couple bullet points down</p> <p>24 in that same section. Again, you have to read this</p>	Page 160

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<p style="text-align: right;">Page 161</p> <p>1 with the top of it. "A vehicle pursuit shall be 2 terminated under any of the following circumstances." 3 One of them is a supervisor orders the pursuit 4 terminated. Now, we heard that audio earlier. 5 Lieutenant Paskal said that if this became reckless to 6 call it off; right? 7 A. Did he say reckless or too reckless? 8 Q. Okay. Let me ask you a question. If it's 9 only a little bit reckless is it okay to continue with 10 a pursuit? 11 A. Yeah, I would say almost every pursuit is a 12 little bit wreck -- I mean, they're doing something to 13 not stop unless they just go the speed limit and never 14 change a lane or anything, but it's a subjective term 15 what reckless is. 16 Q. Okay. In your mind, where does a little bit 17 reckless change into too reckless for a pursuit? 18 A. Too reckless would be if it was like a weekday 19 like around 4:00 p.m., people are getting off work, 20 there's a lot of traffic, they start passing cars on 21 the double line, swerving at other vehicles, there's 22 people out on the road walking, things like that, 23 everything together, breaking the speed limit. 24 Q. What about animals, if somebody's got a dog</p>	<p style="text-align: right;">Page 163</p> <p>1 A. Yes. 2 Q. You did not recommend at any point to the 3 supervisor to terminate this pursuit, did you? 4 A. No. 5 Q. Because you think the pursuit was okay? 6 A. Yes. 7 Q. And you think that the danger going around the 8 blind curves and at these speeds was a risk that was 9 worth taking to apprehend this guy? 10 A. Yes. 11 Q. Okay. Responsibility. "The initial pursuing 12 unit will be responsible for the conduct of the pursuit 13 unless such unit is unable to remain close enough to 14 the violator's vehicle to prevent losing contact." 15 Here that initial pursuing unit would be Corporal 16 Peterson; correct? 17 A. Correct. 18 Q. Number of Units under 23.9.6. "Pursuing units 19 will be limited to two unless additional units are 20 authorized by a supervisor." So it was just the two of 21 you guys in this pursuit; right? 22 A. Yes. 23 Q. 23.9.10. Ramming. It's on Page 145. States 24 "Ramming of fleeing vehicles or forcing them off the</p>
<p style="text-align: right;">Page 162</p> <p>1 out there or something, would that give you pause or 2 you just go ahead and take the risk on the animal. 3 A. I think an animal would be inherently less 4 than a human life. Again, it would just depend on the 5 situation. Like just passing an animal wouldn't be a 6 reason to stop a pursuit. 7 Q. What about nearly hitting one? What if you 8 nearly hit a dog as you came around a blind curve, is 9 that something you think you should stop a pursuit for? 10 A. No. 11 Q. So it's okay if you hit somebody's dog? 12 A. Dogs run out in the road all the time. You 13 could just be driving down the road normal and that 14 would happen. 15 Q. Well, if you're going around blind curves 16 being chased by police, there's a better chance you're 17 going to hit somebody's dog than not; right? 18 A. I can't speculate on that. 19 Q. All right. The end of the one I was just 20 reading to you, "Supervisor orders the pursuit 21 terminated or" then it states "the backup unit has a 22 responsibility to recommend to the supervisor if the 23 pursuit should be terminated." You would be the backup 24 unit here; right?</p>	<p style="text-align: right;">Page 164</p> <p>1 road should be avoided. The criteria for using deadly 2 force must be present before using ramming or forcing 3 the vehicle off the road. These tactics should not be 4 used unless authorized by the shift commander if time 5 permits." 6 Would you agree that before a vehicle is forced off 7 of a road that you should be in a position, same 8 position you'd be to use deadly force on somebody? 9 A. Yes. 10 Q. All right, go over to 146, Page 146. 23.13, 11 Misdemeanor/Traffic Offenses. "Department members 12 should seriously consider discontinuance of pursuits 13 when the persons being pursued have committed or is 14 suspected of committing misdemeanor crimes or traffic 15 offense." Here this suspect was clearly suspected of a 16 traffic offense; right? 17 A. From what I understand, yes, but you'd have to 18 refer that to the initial officer. 19 Q. I'll ask the initial officer in a little bit. 20 I'm just asking for what you know. 21 A. Okay. 22 Q. "When making the decision to continue or 23 discontinue the pursuit, the initiating unit and 24 supervisor should consider the following: Is there a</p>

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<p style="text-align: right;">Page 165</p> <p>1 greater probability of a collision than there is of a    2 successful apprehension? Is it possible to identify    3 the suspect and make a follow up at a later time? What    4 is the seriousness or type of misdemeanor offense?    5 Generally equipment, registration or license violations    6 do not justify the hazards of pursuit."</p> <p>7 Do you understand that the policy of South    8 Charleston is that equipment, registration and license    9 violations generally do not justify the hazards of a    10 pursuit?</p> <p>11 A. Yes.</p> <p>12 Q. 23.15 has to do with reporting and it states    13 that "Any time a member is involved in a pursuit, the    14 supervisor will write a pursuit notification report    15 before completing his or her tour of duty and forward    16 it to the chief." Have you seen a pursuit notification    17 report in this case?</p> <p>18 A. No.</p> <p>19 Q. Have you ever seen one?</p> <p>20 A. No.</p> <p>21 Q. Do you know if that's something that the    22 supervisors at South Charleston do?</p> <p>23 A. Not to my knowledge.</p> <p>24 Q. Do you know the report is suppose to include</p>	<p style="text-align: right;">Page 167</p> <p>1 (A brief recess was taken after which the    2 deposition continued as follows:)</p> <p>3 VIDEO OPERATOR: Time is 1:33 p.m. We're    4 on the record.</p> <p>5 BY MR. FORBES:</p> <p>6 Q. Officer Peterson (sic), are you aware that the    7 fleeing charges that were pursued from this in Kanawha    8 County have been dismissed?</p> <p>9 A. Peterson or Harvey?</p> <p>10 Q. I'm sorry, Officer Harvey.</p> <p>11 A. Am I aware that there were felony charges?</p> <p>12 Q. Are you aware they've been dismissed, the    13 felony charges for fleeing?</p> <p>14 A. I think so. I think I heard something. I    15 never seen anything in writing or anything.</p> <p>16 Q. Speaking of writings, have you, and I don't    17 want to know about anything you talked about with    18 either your civil lawyer here or this firm or your    19 criminal lawyer, Mr. Dascoli, or his office, but other    20 than that have you e-mailed, text messaged or written    21 in any manner to anyone about this case or what    22 happened here?</p> <p>23 A. No.</p> <p>24 Q. Have you e-mailed, text messaged or written in</p>
<p style="text-align: right;">Page 166</p> <p>1 specific details and it lists all those out? It's    2 suppose to have a written account from all officers    3 involved. Did anyone ask you to give them a written    4 account of the pursuit for purposes of a pursuit    5 notification report?</p> <p>6 A. No.</p> <p>7 Q. 23.16 has to do with a pursuit review. It    8 says "The chief of police will conduct an    9 administrative review of each pursuit to ensure    10 compliance with policy and existing law." Are you    11 aware of an administrative review taking place with    12 respect to this vehicular pursuit?</p> <p>13 A. Not to my knowledge.</p> <p>14 Q. Have you ever, in your time at South    15 Charleston, been aware of them conducting a pursuit    16 review or administrative review of any vehicular    17 pursuit that you've been involved in?</p> <p>18 A. No, not that I'm aware of.</p> <p>19 Q. You know what, let's take couple minutes, let    20 me look at my notes.</p> <p>21 A. Okay.</p> <p>22 Q. Getting close to being done.</p> <p>23 VIDEO OPERATOR: Time is 1:27 p.m. We're    24 off the record.</p>	<p style="text-align: right;">Page 168</p> <p>1 any manner with Officer Peterson about what happened    2 here?</p> <p>3 A. No.</p> <p>4 Q. What did you do to prepare for your deposition    5 today?</p> <p>6 A. Read the report and then read the policy.</p> <p>7 Q. Is there a written use of force policy at    8 South Charleston?</p> <p>9 A. Yes.</p> <p>10 Q. Is that something that you are suppose to be    11 aware of?</p> <p>12 A. Yes.</p> <p>13 Q. As an officer, you've got to comply with that    14 policy; right?</p> <p>15 A. Yes.</p> <p>16 Q. And just like, as an officer, you have to    17 comply with the vehicular pursuit policy; correct?</p> <p>18 A. Yes.</p> <p>19 Q. Now, we watched the video that the bystanders    20 took in this. Would you agree with me that it's good    21 that bystanders take these types of videos when    22 departments don't have their own video stuff so we can    23 really see what happened?</p> <p>24 A. It's good to know what happened.</p>

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<p style="text-align: right;">Page 169</p> <p>1 Q. And in South Charleston the only way we're 2 really going to know is if someone else takes a video 3 unless they change the system?</p> <p>4 A. The only way to see stuff on video is, yeah, 5 bystander or, like, security camera from the station.</p> <p>6 Q. In this situation, on that video we watched a 7 little bit ago that the bystanders took, it is your 8 sworn testimony under oath that your foot, as you, in 9 what I view as a stomp, you're saying your foot did not 10 come in contact with Billy Means's head?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. I asked you some questions early on 13 about your understanding of being cleared by the FBI?</p> <p>14 A. Yeah.</p> <p>15 Q. Did anyone tell you if they've spoken to 16 anyone at the US Attorney's Office? Again, not 17 counsel. I don't want to know about conversations with 18 your attorneys, but Chief Rinehart or others, did 19 anyone, when they were telling you you were "cleared," 20 that they had spoken to the United States Attorney's 21 Office and there had been some kind of decision about 22 whether to charge you with a crime made?</p> <p>23 A. Yes, Chief Rinehart told me that.</p> <p>24 Q. Did he say which US attorney he spoke to?</p>	<p style="text-align: right;">Page 171</p> <p>1 anything like that.</p> <p>2 Q. Have you spoken to anyone at the United States 3 Attorney's Office about this Billy Means incident?</p> <p>4 A. No.</p> <p>5 Q. Have you spoken to anyone at the Department of 6 Justice, other than when the FBI asked you for a 7 statement and you said I have to get back to you, about 8 this incident?</p> <p>9 A. No, no other communication.</p> <p>10 Q. Have you spoken to anyone at the Kanawha 11 County prosecutor's office about this situation?</p> <p>12 A. No.</p> <p>13 Q. Have you spoken to anyone at the Boone County 14 prosecutor's office about this situation?</p> <p>15 A. No.</p> <p>16 Q. Why did you become a police officer?</p> <p>17 A. To help people. Like I said before, you know, 18 it's something always different. Every day is 19 different.</p> <p>20 Q. You feel bad at all that Billy Means is 21 paralyzed?</p> <p>22 A. Do I feel bad?</p> <p>23 Q. Yeah.</p> <p>24 A. It's unfortunate that he's paralyzed.</p>
<p style="text-align: right;">Page 170</p> <p>1 A. No.</p> <p>2 Q. But he directly told you that he talked to a 3 United States, an assistant United States attorney?</p> <p>4 A. I don't know if he said did or the FBI guy 5 did. I don't know who did.</p> <p>6 Q. He might have said that the FBI guy spoke to 7 an assistant United States attorney?</p> <p>8 A. Yes, yeah.</p> <p>9 Q. And decided not to charge you with a crime?</p> <p>10 A. Correct.</p> <p>11 Q. Did you get the name of who that US attorney 12 was?</p> <p>13 A. No.</p> <p>14 Q. You understand that the US Attorney's Office 15 and the Department of Justice, through the United 16 States Attorney's Office, would ultimately make a 17 charging decision for Federal crimes; right?</p> <p>18 A. Yes.</p> <p>19 Q. You also understand with respect to State 20 crimes, those would be brought by local prosecutors 21 potentially. Did anyone tell you about whether they 22 spoke to either Boone County or Kanawha County 23 prosecutor's office?</p> <p>24 A. Not to my knowledge. I wouldn't be aware of</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. Have you changed any of the manners that you use 2 for pursuing vehicles now in light of this May 2nd, 2020 3 incident?</p> <p>4 A. No. The standard is still the same.</p> <p>5 Q. Were you investigated by South Charleston for 6 this incident?</p> <p>7 A. No.</p> <p>8 Q. Has anyone at South Charleston expressed to you 9 that they were concerned you might have done something 10 wrong here?</p> <p>11 A. No.</p> <p>12 Q. You were never suspended, never removed from the 13 force in any way, were you?</p> <p>14 A. No.</p> <p>15 Q. When the bystander video became public, did 16 anyone at South Charleston suggest to you that maybe you 17 should be placed on some kind of leave pending an 18 investigation?</p> <p>19 A. No.</p> <p>20 Q. You don't think you did anything wrong here, do 21 you?</p> <p>22 A. No.</p> <p>23 MR. FORBES: I don't have any further 24 questions.</p> <p>25 MR. RUGGIER: I don't have any questions.</p>

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<p>1 We will read.</p> <p>2 VIDEO OPERATOR: The time is 1:39 p.m. This</p> <p>3 concludes the deposition.</p> <p>4 (Having indicated he would like to read</p> <p>5 his deposition before filing, further this deponent saith</p> <p>6 not.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 173</p> <p>1 STATE OF WEST VIRGINIA</p> <p>2 COUNTY OF KANAWHA, to wit:</p> <p>3</p> <p>4 I, Teresa Evans, owner of Realtime</p> <p>5 Reporters, LLC, do hereby certify that the attached</p> <p>6 deposition transcript of David Harvey meets the</p> <p>7 requirements set forth within article twenty-seven,</p> <p>8 chapter forty-seven of the West Virginia Code to the best</p> <p>9 of my ability.</p> <p>10 Given under my hand this 28th day of April</p> <p>11 2021.</p> <p>12</p> <p>13 /s/ Teresa Evans</p> <p>14</p> <p>15</p> <p>16</p> <p>17 Registered Professional</p> <p>18 Reporter/Certified Realtime Reporter</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1 STATE OF WEST VIRGINIA,</p> <p>2 COUNTY OF KANAWHA, to wit;</p> <p>3 I, Angela L. Curtis, a Notary Public within and</p> <p>4 for the County and State aforesaid, duly commissioned and</p> <p>5 qualified, do hereby certify that the foregoing deposition</p> <p>6 of David Harvey was duly taken by me and before me at the</p> <p>7 time and place and for the purpose specified in the</p> <p>8 caption hereof, the said witness having been by me first</p> <p>9 duly sworn.</p> <p>10 I further certify that the attached deposition</p> <p>11 transcript of David Harvey meets the requirements set</p> <p>12 forth within article twenty-seven, chapter forty-seven of</p> <p>13 the West Virginia Code to the best of my ability.</p> <p>14 I do further certify that the said deposition was</p> <p>15 correctly taken by me in shorthand notes, and that the</p> <p>16 same were accurately written out in full and reduced to</p> <p>17 typewriting and that the witness did request to read his</p> <p>18 transcript.</p> <p>19 I further certify that I am neither attorney or</p> <p>20 counsel for, nor related to or employed by, any of the</p> <p>21 parties to the action in which this deposition is taken,</p> <p>22 and further that I am not a relative or employee of any</p> <p>23 attorney or counsel employed by the parties or financially</p> <p>24 interested in the action.</p> <p>25 My commission expires August 23, 2022. Given</p> <p>under my hand this 28th day of April 2021.</p> <p><i>Angela L. Curtis</i></p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 174</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1 STATE OF _____,</p> <p>2 COUNTY OF _____,</p> <p>3 Sworn to before me, _____, Notary</p> <p>4 Public, this _____ day of _____, 20____.</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 176</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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